

Appendix E

Regulations for Real Property Transfers and Public Benefit Conveyances

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The Federal Property Management Regulations included in this Appendix reflect the regulations in effect on February 23, 1996, authority for which was specifically delegated to the Department of Defense by the Defense Base Closure and Realignment Act of 1990 (see Appendix B). Other regulations are current as of July 1997.

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41 CFR Part 101-47: Federal Property Management Regulations

41 CFR Part 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY as of Feb. 23, 1996

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Subtitle C--Federal Property Management Regulations System
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REGULATIONS
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AUTHORITY: 40 U.S.C. 486(c). Subpart 101-47.9 also issued under 42 U.S.C. 11411.

SOURCE: 29 FR 16126, Dec. 3, 1964, unless otherwise noted.

Sec. 101-47.000 Scope of part.

This part prescribes the policies and methods governing the utilization and disposal of excess and surplus real property and related personal property within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

[47 FR 4521, Feb. 1, 1982]

Subpart 101-47.1--General Provisions

Sec. 101-47.100 Scope of subpart.

This subpart sets forth the applicability of this Part 101-47, and other introductory information.

Sec. 101-47.101 Applicability.

The provisions of this Part 101-47 apply to all Federal agencies, except as may otherwise be specifically provided under each section or subpart.

Sec. 101-47.102 [Reserved]

Sec. 101-47.103 Definitions.

As used throughout this Part 101-47, the following terms shall have the meanings as set forth in this Subpart 101-47.1.

Sec. 101-47.103-1 Act.

The Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

Sec. 101-47.103-2 GSA.

The General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this Part 101-47 have been delegated by the Administrator of General Services.

Sec. 101-47.103-3 Airport.

Any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Sec. 101-47.103-4 Chapel.

Any Government-owned building and improvements, including surplus fixtures or furnishings therein, related or essential to the religious activities and services for which the building is to be used and maintained, was designed for and used, or was intended to be used.

Sec. 101-47.103-5 Decontamination.

The complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

[53 FR 29893, Aug. 9, 1988]

Sec. 101-47.103-6 Disposal agency.

The executive agency designated by the Administrator of General Services to dispose of surplus real property.

Sec. 101-47.103-7 Holding agency.

The Federal agency which has accountability for the property involved.

Sec. 101-47.103-8 Industrial property.

Any real property and related personal property which has been used or which is suitable to be used for manufacturing, fabricating, or processing of products; mining operations; construction or repair of ships and other waterborne carriers; power transmission facilities; railroad facilities; and pipeline facilities for transporting petroleum or gas.

Sec. 101-47.103-9 Landing area.

Any land or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, takeoff, and parking of aircraft. The term includes, but is not limited to, runways, strips, taxiways, and parking aprons.

Sec. 101-47.103-10 Management.

The safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

Sec. 101-47.103-11 Protection.

The provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine and eliminate fire and other hazards, and necessary guards to protect property against theft, vandalism, and unauthorized entry.

Sec. 101-47.103-12 Real property.

(a) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and house trailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except:

- (1) The public domain;
- (2) Lands reserved or dedicated for national forest or national park purposes;
- (3) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;
- (4) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and
- (5) Crops when designated by such agency for disposition by severance and removal from the land.

(b) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for disposition without the underlying land (including such as may be located on the public domain, or lands withdrawn or reserved from the public domain, or lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and house trailers (with or without undercarriages).

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(c) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

[29 FR 16126, Dec. 3, 1964, as amended at 30 FR 11281, Aug. 2, 1965; 33 FR 8737, June 14, 1968]

Sec. 101-47.103-13 Related personal property.

"Related personal property" means any personal property:

- (a) Which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property. Normally, common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property; or
- (b) Which is determined by the Administrator of General Services to be related to the real property.

[46 FR 45951, Sept. 16, 1981]

Sec. 101-47.103-14 Other terms defined in the Act.

Other terms which are defined in the Act shall have the meanings given them by such Act.

Sec. 101-47.103-15 Other terms.

Other terms not applicable throughout this part are defined in the sections or subparts to which they apply.

Subpart 101-47.2--Utilization of Excess Real Property

Sec. 101-47.200 Scope of subpart.

(a) This subpart prescribes the policies and methods governing the reporting by executive agencies and utilization by Federal agencies of excess real property, including related personal property within the State of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. This subpart does not apply to the abandonment, destruction, or donation to public bodies, under section 202(h) of the Act (covered by Subpart 101-47.5).

(b) The provisions of this Subpart 101-47.2 shall not apply to asbestos on Federal property which is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

[53 FR 29893, Aug. 9, 1988]

Sec. 101-47.201 General provisions of subpart.

Sec. 101-47.201-1 Policy.

It is the policy of the Administrator of General Services:

- (a) To stimulate the identification and reporting by executive agencies of excess real property.
- (b) To achieve the maximum utilization by executive agencies, in terms of economy and efficiency, of excess real property in order to minimize expenditures for the purchase of real property.
- (c) To provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 40698, Aug. 11, 1977]

Sec. 101-47.201-2 Guidelines.

(a) Each executive agency shall:

(1) Survey real property under its control (including property assigned on a permit basis to other Federal agencies, or outleased to States, local governments, other public bodies, or private interests) at least annually to identify property which is not needed, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency shall determine whether continuation of the current use or another Federal or other use would better serve the public interest, considering both the agency's needs and the property's location. In conducting each review, agencies shall be guided by Sec. 101-47.801(b), other applicable General Services Administration regulations, and such criteria as may be established by the Federal Property Council;

(2) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(3) Promptly report to GSA real property which it has determined to be excess.

(b) Each executive agency shall, so far as practicable, pursuant to the provisions of this subpart, fulfill its needs for real property by utilization of excess real property.

(c) To preclude the acquisition by purchase of real property when excess or surplus property of another Federal agency may be available which would meet the need, each executive agency shall notify GSA of its needs and ascertain whether any such property is available. However, in specific instances where the agency's proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics which limit the possible use of other available property, the notification shall not be required. For example, for a dam site or reservoir area or the construction of a generating plant or a substation specific lands are needed and, ordinarily, no purpose would be served by such notification.

(d) In every case of a proposed transfer of excess real property, the paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based.

(1) A proposed transfer should not establish a new program of an executive agency which has never been reflected in any previous budget submission or congressional action; nor should it substantially increase the level of an agency's existing programs beyond that which has been contemplated in the President's budget or by the Congress.

(2) Before requesting a transfer of excess real property, an executive agency should:

(i) Screen the holdings of the bureaus or other organizations within the agency to determine whether the new requirement can be met through improved utilization. Any utilization, however, must be for purposes that are consistent with the highest and best use of the property under consideration; and

(ii) Review all real property under its accountability which it has assigned on a permit basis to other Federal agencies, or outleased to States, local governments, other public bodies, or private interests and terminate the permit or lease for any property, or portion thereof, that is suitable for the proposed need whenever such termination is not prohibited by the terms of the permit or lease.

(3) Property found to be available under Sec. 101-47.201-2(d)(2) (i) or (ii), should be utilized for the proposed need in lieu of requesting a transfer of excess real property. Reassignments of such property within the agency should be made in appropriate cases.

(4) The appraised fair market value of the excess real property proposed for transfer should not substantially exceed the probable purchase price of other real property which would be suitable for the intended purpose.

(5) The size and quantity of excess real property to be transferred should be limited to the actual requirements. Other portions of an excess installation which can be separated should be withheld from

transfer and made available for disposal to other agencies or to the public.

(6) Consideration should be given to the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer. It should be clearly demonstrated that the transfer will prove more economical over a sustained period of time than acquisition of a new facility specifically planned for the purpose.

(7) Excess real property should not be permanently transferred to agencies for programs which appear to be scheduled for substantial curtailment or termination. In such cases, the property may be temporarily transferred on a conditional basis, with an understanding that the property will be released for further Federal utilization or disposal as surplus property, at a time agreed upon when the transfer is arranged (see Sec. 101-47.203-8).

(e) Excess real property of a type which may be used for office, storage, and related purposes normally will be assigned by, or at the direction of, GSA for use to the requesting agency in lieu of being transferred to the agency.

(f) Federal agencies which normally do not require real property, other than for office, storage, and related purposes, or which may not have statutory authority to acquire such property, may obtain the use of excess real property for an approved program when authorized by GSA.

[29 FR 16126, Dec. 3, 1964, as amended at 39 FR 11281, Sept. 2, 1965; 37 FR 5029, Mar. 9, 1972; 40 FR 12078, Mar. 17, 1975]

Sec. 101-47.201-3 Lands withdrawn or reserved from the public domain.

(a) Agencies holding lands withdrawn or reserved from the public domain, which they no longer need, shall send to the GSA regional office for the region in which the lands are located an information copy of each notice of intention to relinquish filed with the Department of the Interior (43 CFR Part 2372, et seq.).

(b) Section 101-47.202-6 prescribes the procedure for reporting to GSA as excess property, certain lands or portions of lands withdrawn or reserved from the public domain for which such notices have been filed with the Department of the Interior.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 40698, Aug. 11, 1977]

Sec. 101-47.201-4 Transfers under other laws.

Pursuant to section 602(c) of the Act, transfers of real property shall not be made under other laws, but shall be made only in strict accordance with the provisions of this subpart unless the Administrator of General Services, upon written application by the disposal agency, shall determine in each case that the provisions of any such other law, pursuant to which a transfer is proposed to be made, are not inconsistent with the authority conferred by this Act. The provisions of this section shall not apply to transfers of real property authorized to be made by section 602(d) of the Act or by any special statute which directs or requires an executive agency named therein to transfer or convey specifically described real property in accordance with the provisions of such statute.

Sec. 101-47.202 Reporting of excess real property.

Sec. 101-47.202-1 Reporting requirements.

Each executive agency shall report to GSA, pursuant to the provisions of this section, all excess real property except as provided in Sec. 101-47.202-4. Reports of excess real property shall be based on the agency's official real property records and accounts.

(a) All excess related personal property shall be reported as a part of the same report covering the excess real property.

(b) Upon request of the Administrator of General Services, executive agencies shall institute specific surveys to determine that portion of real property, including unimproved property, under their control which might be excess and suitable for office, storage, and related facilities, and shall report promptly to the Administrator of General Services as soon as each survey is completed.

Sec. 101-47.202-2 Report forms.

Reports of excess real property and related personal property shall be prepared on Standard Form 118, Report of Excess Real Property (see Sec. 101-47.4902), and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A (Sec. 101-47.4902-1); Standard Form 118b, Land, Schedule B (see Sec. 101-47.402-2); and Standard Form 118c, Related Personal Property, Schedule C (see Sec. 101-47.4902-3). Instructions for the preparation of Standard Forms 118, 118a, 118b, and 118c are set forth in Sec. 101-47.4902-4.

(a) Property for which the holding agency is designated as the disposal agency under the provisions of Sec. 101-47.302-2 and which is required to be reported to GSA under the provisions of this section shall be reported on Standard Form 118, without the accompanying Schedules A, B, and C, unless the holding agency requests GSA to act as disposal agency and a statement to that effect is inserted in Block 18, Remarks, of Standard Form 118.

(b) In all cases where Government-owned land is reported, there shall be attached to and made a part of Standard Form 118 (original and copies thereof) a report prepared by a qualified employee of the holding agency on the Government's title to the property based upon his review of the records of the agency. The report shall recite:

- (1) The description of the property.
- (2) The date title vested in the United States.
- (3) All exceptions, reservations, conditions, and restrictions, relating to the title acquired.
- (4) Detailed information concerning any action, thing, or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected or may have affected the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect shall be made a part of the report.

(5) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect shall be made a part of the report.

(6) Detailed information regarding any known flood hazards or flooding of the property and, if located in a floodplain or wetlands, a listing of and citations to those uses that are restricted under identified Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977.

(7) The specific identification and description of fixtures and related personal property that have possible historic or artistic value.

(8) The historical significance of the property, if any, and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property on the National Register. If the holding agency is aware of any effort by the public to have the property listed on the National Register, this information should be included.

(9) To the extent such information is reasonably available or ascertainable from agency files, personnel, and other inquiry, a description of the type, location and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (e.g., fireproofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the

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property. To assist GSA in considering the disposal options for the property, agencies shall also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (See also Sec. 101-47.200(b).)

(10) With respect to hazardous substance activity on the property:

(i) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the Environmental Protection Agency at 40 CFR part 373, took place on the property. Hazardous substance activity includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property shall review the regulations issued by the Environmental Protection Agency at 40 CFR part 373 for details on the information required.

(ii) If such activity took place, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. In addition to the specific information on the type and quantity of the hazardous substance, the reporting agency shall also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of the property was reported excess. If such action has not been taken, the reporting agency shall advise the disposal agency when such action will be completed.

(iii) If no such activity took place, the reporting agency must include a statement: "The (reporting agency) has determined, accordance with regulations issued by the Environmental Protection Agency at 40 CFR part 373, that there is no evidence to indicate that hazardous substance activity took place on the property during the time the property was owned by the United States."

(c) There shall be transmitted with Standard Form 118:

(1) A legible, reproducible copy of all instruments in possession of the agency which affect the right, title, or interest of the United States in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). In cases where the agency considers it to be impracticable to transmit the abstracts of title and related title evidence, such documents need not be transmitted; however, the name and address of the custodian of such documents shall be stated in the title report referred to in Sec. 101-47.202-2(b) and they shall be furnished if requested by GSA;

(2) Any appraisal reports in the possession of the holding agency of the fair market value or the fair annual rental of the property reported; and

(3) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by the Environmental Protection Agency under 40 CFR Part 761. If the property does contain any equipment subject to 40 CFR Part 761, the certification must include an assurance on behalf of the holding agency that each item of such equipment is now and will be maintained in a state of compliance with such regulations until disposal of the property.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 15541, Dec. 9, 1966; 34 FR 8166, May 24, 1969; 40 FR 22256, May 22, 1975; 44 FR 19406, Apr. 3, 1979; 52 FR 46467, Dec. 8, 1987; 53 FR 29893, Aug. 9, 1988; FTR Amdt. 16, 56 FR 15048, Apr. 15, 1991]

Sec. 101-47.202-3 Submission of reports.

Reports of excess shall be filed with the regional office of GSA for the region in which the excess property is located, as follows:

(a) Government-owned real property and related personal property shall be reported by the holding agencies 90-calendar days in advance of the date such excess property shall become available for transfer to another Federal agency or for disposal. Where the circumstances will not permit excess real property and related personal property to be reported a full 90-calendar days in advance of the date it will be available, the report shall be made as far in advance of such date as possible.

(b) Leasehold interests in real property determined to be excess shall be reported at least 60-calendar days prior to the date on which notice of termination or cancellation is required by the terms of the instrument under which the property is occupied.

(c) All reports submitted by the Department of Defense shall bear the certification "This property has been screened against the known needs of the Department of Defense." All reports submitted by civilian agencies shall bear the certification "This property has been screened against the known needs of the holding agency."

Sec. 101-47.202-4 Exceptions to reporting.

(a) A holding agency shall not report to GSA leased space assigned to the agency by GSA and determined by the agency to be excess.

(b) Also, except for those instances set forth in Sec. 101-47.202-4(c) a holding agency shall not report to GSA property used, occupied, or controlled by the Government under a lease, permit, license, easement, or similar instrument when:

(1) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;

(2) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy;

(3) The term of the lease or other instrument would preclude transfer to, or use by, another Federal agency or disposal to a third party; or

(4) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 sq. feet.

(c) Property, which otherwise would not be reported because it falls within the exceptions set forth in Sec. 101-47.202-4(b) shall be reported:

(1) If there are Government owned improvements located on the premises; or

(2) If the continued use, occupancy, or control of the property by the Government is needful for the operation, production, or maintenance of other property owned or controlled by the Government that has been reported excess or is required to be reported to GSA under the provisions of this section.

Sec. 101-47.202-5 Reporting after submissions to the Congress.

Reports of excess covering property of the military departments and of the Office of Emergency Planning prepared after the expiration of 30 days from the date upon which a report of the facts concerning the reporting of such property was submitted to the Committees on Armed Services of the Senate and House of Representatives, 10 U.S.C. 2662 and the Act of August 10, 1956, 70A Stat. 636, as amended (50 U.S.C. App. 2285), shall contain a statement that the requirements of the statute have been met.

Sec. 101-47.202-6 Reports involving the public domain.

(a) Agencies holding land withdrawn or reserved from the public domain which they no longer need, shall report on Standard Form 118, with appropriate Schedules A, B, and C, land or portions of land so withdrawn or reserved and the improvements thereon, if any, to the regional office of GSA for the region in which the lands are located when the agency has:

(1) Filed a notice of intention to relinquish with the Department of the Interior and sent a copy of the notice to the regional office of GSA (Sec. 101-47.201-3);

(2) Been notified by the Department of the Interior that the Secretary of the Interior, with the concurrence of the Administrator of General Services, has determined the lands are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(3) Obtained from the Department of the Interior a report as to whether any agency (other than the holding agency) claims primary, joint, or secondary jurisdiction over the lands and whether the Department's records show the lands to be encumbered with any existing valid rights or privileges under the public land laws.

(b) Should the Department of the Interior determine that minerals in the lands are not suitable for disposition under the public land mining and mineral leasing laws, the Department will notify the appropriate regional office of GSA of such determination and will authorize the holding agency to include the minerals in its report to GSA.

(c) When reporting the property to GSA, a true copy of the notification (Sec. 101-47.202-6(a)(2)) and report (Sec. 101-47.202-6(a)(3)) shall be submitted as a part of the holding agency's report on the Government's legal title which shall accompany Standard Form 118.

Sec. 101-47.202-7 Reports involving contaminated property.

Any report of excess covering property which in its present condition is dangerous or hazardous to health and safety, shall state the extent of such contamination, the plans for decontamination, and the extent to which the property may be used without further decontamination. In the case of properties containing asbestos-containing materials and in lieu of the requirements of the foregoing provisions of Sec. 101-47.202-7, see subsection 101-47.202-2(b)(9).

[53 FR 28984, Aug. 9, 1988]

Sec. 101-47.202-8 Notice of receipt.

GSA shall promptly notify the holding agency of the date of receipt of each Report of Excess Real Property (Standard Form 118).

Sec. 101-47.202-9 Expense of protection and maintenance.

When there are expenses connected with the protection and maintenance of the property reported to GSA, the notice to the holding agency of the date of receipt (see Sec. 101-47.202-8) will indicate, if determinable, the date that the provisions of Sec. 101-47.402-2 will become effective. Normally this will be the date of the receipt of the report. If because of actions of the holding agency the property is not available for immediate disposition at the time of receipt of the report, the holding agency will be reminded in the notice that the period of its responsibility for the expense of protection and maintenance will be extended by the period of the delay.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.202-10 Examination for acceptability.

Each report of excess shall be reviewed by GSA to ascertain whether the report was prepared in accordance with the provisions of this section. Within fifteen calendar days after receipt of a report, the holding agency shall be informed by letter of the findings of GSA.

(a) Where it is found that a report is adequate to the extent that GSA can proceed with utilization and disposal actions for the property, the report shall be accepted and the holding agency shall be informed of the date of such acceptance. However, the holding agency shall, upon request, promptly furnish such additional information or documents relating to the property as may be required by GSA to accomplish a transfer or a disposal.

(b) Where it is found that a report is insufficient to the extent that GSA would be unable to proceed with any utilization or disposal actions for the property, the report shall be returned and the holding

agency shall be informed of the facts and circumstances that required the return of the report. The holding agency promptly shall take such action as may be appropriate to submit an acceptable report to GSA. Should the holding agency be unable to submit an acceptable report, the property shall be removed from under the provisions of Sec. 101-47.402-2.

Sec. 101-47.203 Utilization.

Sec. 101-47.203-1 Reassignment of real property by the agencies.

Each executive agency shall, as far as practicable and within the policies expressed in this Subpart 101-47.2, make reassignments of real property and related personal property under its control and jurisdiction among activities within the agency in lieu of acquiring such property from other sources.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.203-2 Transfer and utilization.

Each executive agency shall, as far as practicable and within the policies expressed in this Subpart 101-47.2, transfer excess real property under its control to other Federal agencies and to the organizations specified in Sec. 101-47.203-7, and shall fulfill its requirements for real property by obtaining excess real property from other Federal agencies. Transfers of property shall be made in accordance with the provisions of this subpart.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.203-3 Notification of agency requirements.

Each executive agency shall notify the proper GSA regional office whenever real property is needed for an authorized program of the agency. The notice shall state the land area of the property needed, the preferred location or suitable alternate locations, and describe the type of property needed in sufficient detail to enable GSA to review its records of property that it knows will be reported excess by holding agencies, its inventory of excess property, and its inventory of surplus property, to ascertain whether any such property may be suitable for the needs of the agency. The agency shall be informed promptly by the GSA regional office as to whether or not any such property is available.

[33 FR 571, Jan. 17, 1968]

Sec. 101-47.203-4 Real property excepted from reporting.

Agencies having transferable excess real property and related personal property in the categories excepted from reporting by Sec. 101-47.202-4 shall, before disposal, satisfy themselves in a manner consistent with the provisions of this section that such property is not needed by other Government agencies.

Sec. 101-47.203-5 Screening of excess real property.

Excess real property and related personal property reported by executive agencies shall, unless such screening is waived, be screened by GSA for utilization by Federal real property holding agencies (listed in Sec. 101-47.4907), which may reasonably be expected to have use for the property as follows:

(a) Notices of availability will be submitted to each such agency which shall, within 30 calendar days from the date of notice, advise GSA if there is a firm requirement or a tentative requirement for the property. Agencies having tentative or firm requirements for surplus Federal real property for replacement housing for displaced persons, as authorized by section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1902), shall review these notices for the additional purpose of identifying properties for which they may have such a requirement. When such a requirement exists, the agency shall so advise the appropriate GSA regional office.

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(1) In the event a tentative requirement exists, the agency shall, within an additional 30 calendar days, advise GSA if there is a firm requirement.

(2) Within 60 calendar days after advice to GSA that a firm requirement exists, the agency shall furnish GSA a request for transfer of the property pursuant to Sec. 101-47.203-7.

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested under the provisions of section 203(k)(1) of the Act, and for information of the Secretary of the Interior in connection with the exercise of the authority vested under the provisions of section 203(k)(2) of the Act or a possible determination under the provisions of section 203(k)(3) of the Act, will be sent to the offices designated by the Secretaries to serve the areas in which the properties are located. Similar notices of availability for information of the Attorney General in connection with a possible determination under the provisions of section 203(p)(1) of the Act, and for information of the Secretary of Transportation in connection with the exercise of the authority vested under the provisions of section 203(q) of the Act, will be respectively sent to the Office of Justice Programs, Department of Justice, and the Maritime Administration, Department of Transportation.

(c) The Departments of Health and Human Services, Education, Interior, Justice, and Transportation shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Departments are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

(d) Concurrently with the 30-day Federal agency use screening period, those Federal agencies that sponsor public benefit disposals at less than fair market value as permitted by the statutory authorities in Sec. 101-47.4905 may provide the disposal agency with a recommendation, together with a brief supporting rationale, as illustrated in Sec. 101-47.4909, that the highest and best use of the property is for a specific public benefit purpose. The recommendation may be made by the agency head, or designee, and will be considered by the disposal agency in its final highest and best use analysis and determination. After a determination of surplus has been made, if the disposal agency agrees with a sponsoring Federal agency that the highest and best use of a particular property is for a specific public benefit purpose, local public bodies will be notified that the property is available for that use.

[29 FR 16126, Dec. 3, 1964, as amended at 36 FR 11438, June 12, 1971; 47 FR 37175, Aug. 25, 1982; 49 FR 37091, Sept. 21, 1984; 52 FR 9832, Mar. 27, 1987; FMPR Amdt. H-192, 60 FR 35706, July 11, 1995]

Sec. 101-47.203-6 Designation as personal property.

(a) Prefabricated movable structures such as Butler-type storage warehouses, quonset huts, and house trailers (with or without undercarriages) reported to GSA with the land on which they are located may, in the discretion of GSA, be designated for disposition as personal property for off-site use.

(b) Related personal property may, in the discretion of the disposal agency, be designated for disposition as personal property. Consideration of such designation shall be given particularly to items having possible historic or artistic value to ensure that Federal agencies, including the Smithsonian Institution (see Sec. 101-43.302), are afforded the opportunity of obtaining them through personal property channels for off-site use for preservation and display. Fixtures such as murals and fixed sculpture which have exceptional historical or

artistic value may be designated for disposition by severance for off-site use. In making such designations, consideration shall be given to such factors as whether the severance can be accomplished without seriously affecting the value of the realty and whether a ready disposition can be made of the severed fixtures.

(c) When a structure is to be demolished, any fixtures or related personal property therein may, at the discretion of the disposal agency, be designated for disposition as personal property where a ready disposition can be made of these items through such action. As indicated in paragraph (b) of this section, particular consideration should be given to designating items of possible historical or artistic value as personal property in such instances.

[34 FR 8166, May 24, 1969]

Sec. 101-47.203-7 Transfers.

(a) The agency requesting transfer of excess real property and related personal property reported to GSA shall prepare and submit to the proper GSA regional office GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property (Sec. 101-47.4904). Instructions for the preparation of GSA Form 1334 are set forth in Sec. 101-47.4904-1.

(b) Upon determination by GSA that a transfer of the property requested is in the best interest of the Government and that the requesting agency is the appropriate agency to hold the property, the transfer may be made among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

(c) [Reserved]

(d) Transfers of property to executive agencies shall be made when the proposed land use is consistent with the policy of the Administrator of General Services as prescribed in Sec. 101-47.201-1 and the policy guidelines prescribed in Sec. 101-47.201-2. In determining whether a proposed transfer should be approved under the policy guidelines, GSA and OMB may consult informally to obtain all available data concerning actual program needs for the property.

(e) GSA will execute or authorize all approved transfers to the requesting agency of property reported to GSA. Agencies may transfer without reference to GSA excess real property which is not reported to GSA under the provisions of Sec. 101-47.202-4(b) (1), (2), and (4). However, such transfers shall be made in accordance with the principles set forth in this section.

(f) Pursuant to an agreement between the Director, Office of Management and Budget, and the Administrator of General Services, reimbursement for transfers of excess real property is prescribed as follows:

(1) Where the transferor agency has requested the net proceeds of the transfer pursuant to section 204 (c) of the Act, or where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841) or is a mixed-ownership Government corporation, or the municipal government of the District of Columbia, reimbursement for the transfer shall be in an amount equal to the estimated fair market value of the property requested as determined by the Administrator: Provided, That where the transferor agency is a wholly owned Government corporation, the reimbursement shall be either in an amount equal to the estimated fair market value of the property requested, or the corporation's book value thereof, as may be agreed upon by GSA and the corporation.

(2) Reimbursement for all other transfers of excess real property shall be:

(i) In an amount equal to 100 percent of the estimated fair market value of the property requested, as determined by the Administrator, or if the transfer is for the purpose of upgrading facilities (i.e., for the purpose of replacing other property of the transferee agency which because of the location, nature, or condition thereof, is less efficient for

use), the reimbursement shall be in an amount equal to the difference between the estimated fair market value of the property to be replaced and the estimated fair market value of the property requested, as determined by the Administrator.

(ii) Without reimbursement when the transfer is to be made under either of the following conditions:

(A) Congress has specifically authorized the transfer without reimbursement, or

(B) The Administrator with the approval of the Director, Office of Management and Budget, has approved a request for an exception from the 100 percent reimbursement requirement.

(1) A request for exception from the 100 percent reimbursement requirement shall be endorsed by the head of the executive department or agency requesting the exception.

(2) A request for exception from the 100 percent reimbursement requirement will be submitted to GSA for referral to the Director, Office of Management and Budget, and shall include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive Order 12348, dated February 25, 1982. The unavailability of funds alone is not sufficient to justify an exception. The above required data and documentation shall be attached to GSA Form 1334 by the transferee agency on submission of that form to GSA.

(3) If the Administrator with the approval of the Director, Office of Management and Budget, approves the request for an exception, the Administrator may then complete the transfer. A copy of the Office of Management and Budget approval will be sent to the Property Review Board.

(4) The agency requesting the exception will assume responsibility for protection and maintenance costs where the disposal of the property is deferred for more than 30 days because of the consideration of the request for an exception to the 100 percent reimbursement requirement.

(g) Excess property may be transferred to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction, pursuant to the provisions of section 602(e) of the Act. The amount of reimbursement for such transfer shall be the same as would be required for a transfer of excess property to an executive agency under similar circumstances.

(h) The transferor agency shall provide to the transferee agency all information held by the transferor concerning hazardous substance activity as outlined in Sec. 101-47.202-2.

[29 FR 16126, Dec. 3, 1964, as amended at 37 FR 5029, Mar. 9, 1972; 40 FR 12078, Mar. 17, 1975; 42 FR 40698, Aug. 11, 1977; 47 FR 56499, Dec. 17, 1982; 49 FR 29222, July 19, 1984; FTR Amdt. 16, 56 FR 15048, Apr. 15, 1991]

Sec. 101-47.203-8 Temporary utilization.

(a) Whenever GSA determines that the temporary assignment or reassignment to a Federal agency of any space in excess real property for office, storage, or related facilities would be more advantageous than the permanent transfer of the property to a Federal agency, it will execute or authorize such assignment or reassignment for such period of time as it shall determine. The agency to which the space is made available shall make appropriate reimbursement for the expense of maintaining such space in the absence of appropriation available to GSA therefor.

(b) GSA may approve the temporary assignment or reassignment to a Federal agency of excess real property other than space for office, storage, or related facilities whenever such action would be in the best interest of the Government. In such cases, the agency to which the property is made available may be required to pay a rental or users charge based upon the fair value of such property, as determined by GSA. Where such property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with

an understanding that the property will be reported excess at a time agreed upon when the transfer is arranged (see Sec. 101-47.201-2(d)(7)).

Sec. 101-47.203-9 Non-Federal interim use of property.

The holding agency may, with the approval of GSA, grant rights for non-Federal interim use of excess property reported to GSA, or portions thereof, when it is determined that such interim use is not required for the needs of any Federal agency.

Sec. 101-47.203-10 Withdrawals.

Subject to the approval of GSA, and to such conditions as GSA considers appropriate, reports of excess real property may be withdrawn in whole or in part by the reporting agency at any time prior to transfer to another Federal agency or prior to the execution of a legally binding agreement for disposal as surplus property. Requests for withdrawals shall be addressed to the GSA regional office where the report of excess real property was filed.

[35 FR 17256, Nov. 6, 1970]

Sec. 101-47.204 Determination of surplus.

Sec. 101-47.204-1 Reported property.

Any real property and related personal property reported excess under this Subpart 101-47.2 which has been screened for needs of Federal agencies or waived from such screening by GSA, and not been designated by GSA for utilization by a Federal agency, shall be subject to determination as surplus property by GSA.

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Attorney General, and the Secretary of Transportation will be notified of the date upon which determination as surplus becomes effective. Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may become available for use under sections 203(e)(3) (G) and (H) of the Act.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Secretary of Transportation will be sent to the Maritime Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

(c) With regard to surplus property which GSA predetermines will not be available for disposal under the above-mentioned programs, or whenever the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act, the notice to the affected department(s) will contain advice of such determination or request for reimbursement. The affected department(s) shall not screen for potential applicants for such property.

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[29 FR 16126, Dec. 3, 1964, as amended at 36 FR 8041, Apr. 29, 1971; 47 FR 37175, Aug. 25, 1982; 52 FR 9832, Mar. 27, 1987; FMPR Amdt. H-192, 60 FR 35706, July 11, 1995]

Sec. 101-47.204-2 Property excepted from reporting.

Any property not reported to GSA due to Sec. 101-47.202-4, and not designated by the holding agency for utilization by other agencies pursuant to the provisions of this Subpart 101-47.2, shall be subject to determination as surplus by the holding agency.

Subpart 101-47.3--Surplus Real Property Disposal

Sec. 101-47.300 Scope of subpart.

This subpart prescribes the policies and methods governing the disposal of surplus real property and related personal property within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. This subpart does not apply to the abandonment, destruction, or donation to public bodies, under section 202(h) of the Act (covered by Subpart 101-47.5).

[47 FR 4522, Feb. 1, 1982]

Sec. 101-47.301 General provisions of subpart.

Sec. 101-47.301-1 Policy.

It is the policy of the Administrator of General Services:

(a) That surplus real property shall be disposed of in the most economical manner consistent with the best interests of the Government.

(b) That surplus real property shall ordinarily be disposed of for cash consistent with the best interests of the Government.

(c) That surplus real property shall be disposed of by exchange for privately owned property only for property management considerations such as boundary realignment or provision of access or in those situations in which the acquisition is authorized by law, the requesting Federal agency has received approval from the Office of Management and Budget and clearance from its congressional oversight committees to acquire by exchange, and the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other method of acquisition.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 47205, Sept. 20, 1977; 42 FR 56123, Oct. 21, 1977]

Sec. 101-47.301-2 Applicability of antitrust laws.

(a) In any case in which there is contemplated a disposal to any private interest of real and related personal property which has an estimated fair market value of \$3,000,000 or more, or of patents, processes, techniques, or inventions, irrespective of cost, the disposal agency shall transmit promptly to the Attorney General notice of any such proposed disposal and the probable terms or conditions thereof, as required by section 207 of the Act, for his advice as to whether the proposed disposal would tend to create or maintain a situation inconsistent with antitrust laws, and no such real property shall be disposed of until such advice has been received. If such notice is given by any executive agency other than GSA, a copy of the notice shall be transmitted simultaneously to the office of GSA for the region in which the property is located.

(b) Upon request of the Attorney General, GSA or any other executive agency shall furnish or cause to be furnished such information as it may possess which the Attorney General determines to be appropriate or necessary to enable him to give the requested advice or to determine whether any other disposition or proposed disposition of surplus real property violates or would violate any of the antitrust laws.

[29 FR 16126, Dec. 3, 1964, as amended at 54 FR 12198, Mar. 24, 1989]

Sec. 101-47.301-3 Disposals under other laws.

Pursuant to section 602(c) of the act, disposals of real property shall not be made under other laws but shall be made only in strict accordance with the provisions of this Subpart 101-47.3 unless the Administrator of General Services, upon written application by the disposal agency, shall determine in each case that the provisions of any such other law, pursuant to which disposal is proposed to be made, are not inconsistent with the authority conferred by this Act. The provisions of this section shall not apply to disposals of real property authorized to be made by section 602(d) of the act or by any special statute which directs or requires an executive agency named therein to transfer or convey specifically described real property in accordance with the provisions of such statute.

Sec. 101-47.301-4 Credit disposals and leases.

Where credit is extended in connection with any disposal of surplus property, the disposal agency shall offer credit pursuant to the provisions of Sec. 101-47.304-4. The disposal agency shall administer and manage the credit lease, or permit and any security therefor and may enforce, adjust, or settle any right of the Government with respect thereto in such manner and upon such terms as that agency considers to be in the best interests of the Government.

[42 FR 47205, Sept. 20, 1977]

Sec. 101-47.302 Designation of disposal agencies.

Sec. 101-47.302-1 General.

In accordance with applicable provisions of this Subpart 101-47.3, surplus real property shall be disposed of or assigned to the appropriate Federal department for disposal for public use purposes by the disposal agency.

[36 FR 8042, Apr. 29, 1971]

Sec. 101-47.302-2 Holding agency.

(a) The holding agency is hereby designated as disposal agency for:

(1) Leases, permits, licenses, easements, and similar real estate interests held by the Government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(2) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land with the exception of Government-owned machinery and equipment, which are fixtures being used by a contractor-operator, where such machinery and equipment will be sold to the contractor-operator.

(3) Standing timber and embedded gravel, sand, stone and underground water to be disposed of without the underlying land.

(b) GSA may act as the disposal agency for the type of property described in paragraphs (a)(1) and (2) of this section, whenever requested by the holding agency to perform the disposal functions. Where GSA acts as the disposal agency for the disposal of leases and similar real estate interests as described in paragraph (a)(1) of this section, the holding agency nevertheless shall continue to be responsible for the payment of the rental until the lease is terminated and for the payment of any restoration or other direct costs incurred by the Government as an incident to the termination. Likewise, where GSA acts as disposal agency for the disposal of fixtures, structures, and

improvements as described in paragraph (a)(2) of this section, the holding agency nevertheless shall continue to be responsible for payment of any demolition and removal costs not offset by the sale of the property.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 2658, Feb. 11, 1966; 31 FR 16780, Dec. 31, 1966; 33 FR 8737, June 14, 1968; 48 FR 12526, Mar. 25, 1983; 50 FR 28403, July 12, 1985]

Sec. 101-47.302-3 General Services Administration.

GSA is the disposal agency for all real property and related personal property not covered by the above designations or by disposal authority delegated by the Administrator of General Services in specific instances.

Sec. 101-47.303 Responsibility of disposal agency.

Sec. 101-47.303-1 Classification.

Each surplus property, or, if the property is subdivided, each unit of property shall be classified by the disposal agency to determine the methods and conditions applicable to the disposal of the property. Classification shall be according to the estimated highest and best use for the property. The property may be reclassified from time to time by the disposal agency or by GSA whenever such action is deemed appropriate.

Sec. 101-47.303-2 Disposals to public agencies.

The disposal agency shall comply with the provisions of Executive Order 12372 and 41 CFR Subpart 101-6.21, which enables a State to establish the single point of contact process or other appropriate procedures to review and comment on the compatibility of a proposed disposal with State, regional and local development plans and programs. When a single point of contact transmits a State review process recommendation, the Federal agency receiving the recommendation must either accept the recommendation; reach a mutually agreeable solution with the party(s) preparing the recommendation; or provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution. If there is nonaccommodation, the agency is generally required to wait 10 calendar days after receipt, by the single point of contact, of an explanation before taking final action. The single point of contact is presumed to have received written notification 5 calendar days after the date of mailing of such notification. The 10-day waiting period may be waived if the agency determines that because of unusual circumstances this delay is not feasible.

(a) Whenever property is determined to be surplus, the disposal agency shall, on the basis of the information given in Sec. 101-47.4905, list the public agencies eligible under the provisions of the statutes referred to above to procure the property or portions thereof, except that such listing need not be made with respect to:

(1) Any such property when the determination of the property as surplus is conditioned upon disposal limitations which would be inconsistent with disposal under the statutes authorizing disposal to eligible public agencies; or

(2) Any such property having an estimated fair market value of less than \$1,000 except where the disposal agency has any reason to believe that an eligible public agency may be interested in the property.

(b) Before public advertising, negotiation, or other disposal action, the disposal agency shall give notice to eligible public agencies that the property has been determined surplus. Surplus real property may be procured by public agencies under the statutes cited in Sec. 101-47.4905. A notice to public agencies of surplus determination shall be prepared following the sample shown in Sec. 101-47.4906. This notice shall be transmitted by a letter prepared following the sample shown in Sec. 101-47.4906-1. A copy of this notice shall also be sent

simultaneously to the State single point of contact, under a covering letter prepared following the sample shown in Sec. 101-47.4906-2. The point of contact shall be advised that no final disposal action will be taken for 60 calendar days from the date of notification to allow time for the point of contact to provide any desired comments. The disposal agency will wait the full 60 calendar days, even if the comments are received early, to allow time for the point of contact to send additional or revised comments.

(1) Notice for property located in a State shall be given to the Governor of the State, to the county clerk or other appropriate officials of the county in which the property is located, to the mayor or other appropriate officials of the city or town in which the property is located, to the head of any other local governmental body known to be interested in and eligible to acquire the property, and to the point of contact established by the State or under other appropriate procedures established by the State.

(2) Notice for property located in the District of Columbia shall be given to the Mayor of the District of Columbia and to the point of contact established by the District of Columbia or under other appropriate procedures established by the District of Columbia.

(3) Notice for property located in the Virgin Islands shall be given to the Governor of the Virgin Islands and to the point of contact established by the Virgin Islands or under other appropriate procedures established by the Virgin Islands.

(4) Notice for property located in the Commonwealth of Puerto Rico shall be given to the Governor of the Commonwealth of Puerto Rico and to the point of contact established by the Commonwealth of Puerto Rico or under other appropriate procedures established by the Commonwealth of Puerto Rico.

(c) The notice prepared pursuant to Sec. 101-47.303-2(b) shall also be posted in the post office which serves the area in which the property is located and in other prominent places such as the State capitol building, county building, courthouse, town hall, or city hall. The notice to be posted in the post office shall be mailed to the postmaster with a request that it be posted. Arrangements for the posting of the notice in other prominent places shall be as provided for in the transmittal letters (see Sec. 101-47.4906-1) to eligible public agencies.

(d) A copy of the notice described in paragraph (b) of this section shall be furnished to the appropriate regional or field offices of (1) the National Park Service (NPS) and the Fish and Wildlife Service of the Department of the Interior and (2) the Federal Aviation Administration, the Federal Highway Administration, and the Maritime Administration of the Department of Transportation concerned with the disposal of property to public agencies under the statutes named in the notice.

(e) In the case of property which may be made available for assignment to the Secretary of Health and Human Services (HHS), the Secretary of Education (ED) or the Secretary of the Interior for disposal under sections 203(k)(1) or (k)(2) of the Act:

(1) The disposal agency shall inform the appropriate offices of HHS, ED or the NPS 3 workdays in advance of the date the notice will be given to public agencies, to permit similar notice to be given simultaneously by HHS, ED or NPS to additional interested public bodies. HHS and ED shall furnish notice to eligible nonprofit institutions.

(2) The disposal agency shall furnish the Departments with a copy of the postdated transmittal letter addressed to each public agency, copies (not to exceed 25) of the postdated notice, and a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(3) As of the date of the transmittal letter and notice to public agencies, the Departments may proceed with their screening functions for any potential applicants and thereafter may make their determinations of need and receive applications.

(f) If the disposal agency is not informed within the 29-calendar-day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in Sec. 101-

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47.4905, or is not notified by ED or HHS of a potential educational or public health requirement, or is not notified by the Department of the Interior of a potential park or recreation requirement, or is not notified by the Department of Justice (DOJ) of a potential correctional facilities use, or is not notified by the Department of Transportation (DOT) of a potential port facility use; it shall be assumed that no public agency or nonprofit institution desires to procure the property. (The requirements of this Sec. 101-47.303-2(f) shall not apply to the procedures for making Federal surplus real property available to assist the homeless in accordance with Section 501 of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11411).)

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

- (1) National Park Service, Department of the Interior;
- (2) Department of Health and Human Services;
- (3) Department of Education;
- (4) Federal Aviation Administration, Department of Transportation;
- (5) Fish and Wildlife Service, Department of the Interior;
- (6) Federal Highway Administration, Department of Transportation;
- (7) Office of Justice Programs, Department of Justice; and
- (8) Maritime Administration, Department of Transportation.

(h) When the disposal agency has made a determination as to what constitutes a reasonable period of time to develop and submit a formal application, the public agency shall be so notified. The public agency shall be advised of the information required in connection with an application to procure the property.

(i) Upon receipt of the formal application for the property, the disposal agency shall consider and act upon it in accordance with the provisions of the statute and applicable regulations. If comments are received indicating that the disposal is incompatible with State, regional, or local development plans and programs, the disposal agency shall attempt to resolve the differences consistent with its statutory responsibilities in the disposal of surplus property.

[29 FR 16126, Dec. 3, 1964, as amended at 34 FR 11209, July 3, 1969; 35 FR 8486, June 2, 1970; 36 FR 9776, May 28, 1971; 40 FR 22256, May 22, 1975; 52 FR 9829, Mar. 27, 1987; FMPR Amdt. H-192, 60 FR 35707, July 11, 1995]

Sec. 101-47.303-2a Notice for zoning purposes.

(a) Where the surplus land is located in an urban area as defined in section 806 of the Act, that copy of the notice to public agencies required under Sec. 101-47.303-2(b) which is sent to the head of the local governmental unit having jurisdiction over zoning and land use regulation in the area shall be accompanied by a copy of section 803 of the Act (see Sec. 101-47.4906a) and the transmittal letter in such instances shall include an additional paragraph requesting information concerning zoning as set forth in Sec. 101-47.4906b.

(b) Information which is furnished by the unit of general local government pursuant to the action taken in paragraph (a) of this section shall be included in Invitations for Bid in advertised sales. In negotiated sales, this information shall be presented to prospective purchasers during the course of the negotiations and shall be included

in the sales agreements. In either instance, this information shall be followed by a written statement, substantially as follows:

The above information was obtained from ----- and is furnished pursuant to section 803 of the Federal Property and Administrative Services Act of 1949, as amended. The Government does not guarantee that the information is necessarily accurate or will remain unchanged. Any inaccuracies or changes in the above information shall not be cause for adjustment or rescission of any contract resulting from this Invitation for Bid or Sales Agreement.

(c) If no response to a request for such zoning information is received, the property may be offered for sale without furnishing such information to prospective purchasers. If the unit of general local government notifies the disposal agency of its desire to zone the property, it shall be afforded a 30-calendar-day period (in addition to the 20-calendar days afforded in the notice of surplus determination) to issue such zoning regulations. If the zoning cannot be accomplished within this time frame, the sale may proceed but the prospective purchasers shall be advised of the pending zoning of the property.

[34 FR 11209, July 3, 1969]

Sec. 101-47.303-3 Studies.

The disposal agency shall compile from the title documents and related papers appropriate information, for use in disposal actions, regarding all real property and related personal property available for disposal.

Sec. 101-47.303-4 Appraisal.

(a) Except as otherwise provided in this subpart 101-47.3, the disposal agency shall in all cases obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of property available for disposal.

(b) No appraisal need be obtained.

(1) When the property is to be disposed of without monetary consideration, or at a fixed price, or

(2) When the estimated fair market value of property to be offered on a competitive sale basis does not exceed \$50,000; Provided, however, That the exception in paragraph (b)(1) of this section shall not apply to disposals that take any public benefit purpose into consideration in fixing the sale value of the property.

(3) The estimated fair market value of property to be offered on a competitive sale basis does not exceed \$10,000.

(c) The disposal agency shall have the property appraised by experienced and qualified persons familiar with the types of property to be appraised by them. Any person engaged to collect or evaluate information pursuant to this subsection shall certify that he has no interest, direct or indirect, in the property which would conflict in any manner with the preparation and submission of an impartial appraisal report.

[29 FR 16126, Dec. 3, 1964, as amended at 34 FR 16545, Oct. 16, 1969; 55 FR 41189, Oct. 10, 1990]

Sec. 101-47.304 Advertised and negotiated disposals.

Sec. 101-47.304-1 Publicity.

(a) The disposal agency shall widely publicize all surplus real property and related personal property which becomes available for disposal hereunder, giving information adequate to inform interested persons of the general nature of the property and its possible uses, as well as any reservations, restrictions, and conditions imposed upon its disposal.

(b) A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair

market value of the property is less than \$2,500, shall be prepared and submitted, for inclusion in the U.S. Department of Commerce publication "Commerce Business Daily," to: U.S. Department of Commerce (S-Synopsis), Room 1300, 433 West Van Buren Street, Chicago, Illinois 60604.

Sec. 101-47.304-2 Soliciting cooperation of local groups.

The disposal agency may consult with local groups and organizations and solicit their cooperation in giving wide publicity to the proposed disposal of the property.

Sec. 101-47.304-3 Information to interested persons.

The disposal agency shall, upon request, supply to bona fide potential purchasers and lessees adequate preliminary information, and, with the cooperation of the holding agency where necessary, shall render such assistance to such persons as may enable them, insofar as feasible, to obtain adequate information regarding the property. The disposal agency shall establish procedures so that all persons showing due diligence are given full and complete opportunity to make an offer.

Sec. 101-47.304-4 Invitation for offers.

In all advertised and negotiated disposals, the disposal agency shall prepare and furnish to all prospective purchasers or lessees written invitations to make an offer, which shall contain or incorporate by reference all the terms and conditions under which the property is offered for disposal, including all provisions required by statute to be made a part of the offer. The invitation shall further specify the form of the disposal instrument, which specifications shall be in accordance with the appropriate provisions of Secs. 101-47.307-1 and 101-47.307-2.

(a) When the disposal agency has determined that the sale of specific property on credit terms is necessary to avoid retarding the salability of the property and the price obtainable, the invitation shall provide for submission of offers on the following terms:

- (1) Offers to purchase of less than \$2,500 shall be for cash.
- (2) When the purchase price is \$2,500 or more but less than \$10,000, a cash downpayment of not less than 25 percent shall be required with the balance due in 8 years or less.
- (3) When the purchase price is \$10,000 or more, a cash downpayment of not less than 20 percent shall be required with the balance due in 10 years or less.
- (4) The purchaser shall furnish a promissory note secured by the purchase money mortgage or deed of trust on the property, whichever the Government determines to be appropriate.
- (5) Payment will be in equal quarter-annual installments of the principal together with interest on the unpaid balance.
- (6) Interest on the unpaid balance will be at the General Services Administration's established interest rate.

(b) Where the disposal agency has determined that an offering of the property on credit terms that do not meet the standards set forth in Sec. 101-47.304-4(a) is essential to permit disposal of the property in the best interests of the Government, the invitation may provide for submission of offers on such alternate terms of payment as may be recommended by the disposal agency and approved by the Administrator of General Services on the basis of a detailed written statement justifying the need to deviate from the standard terms. The justification shall be based on the needs of the Federal Government as distinguished from the interests of the purchaser. The sale in those cases where the downpayment is less than 20 percent shall, unless otherwise authorized by the Administrator of General Services, be under a land contract which shall provide, in effect, for conveyance of title to the purchaser by quitclaim deed or other form of conveyance in accordance with the appropriate provisions of Secs. 101-47.307-1 and 101-47.307-2 upon payment of one-third of the total purchase price and accrued interest, or earlier if the Government so elects, and execution and delivery of purchaser's note and purchase money

mortgage (or bond and deed of trust) satisfactory to the Government, to secure payment of the unpaid balance of the purchase price.

(c) The disposal agency may increase the cash downpayment requirement or shorten the period of amortization whenever circumstances warrant and in the case of sales of farms, may provide for payment of the unpaid balance on equal semiannual or annual installment basis.

(d) Where a sale is to be made on credit, the invitation shall provide that the purchaser agrees by appropriate provisions to be incorporated in the disposal instruments that he will not lease (unless the property was offered without leasing restrictions by the Government) or sell the property, or any part thereof or interest therein, without prior written authorization of the Government.

(1) In appropriate cases, except as provided in Sec. 101-47.304-4(d)(2), the invitation shall state that the disposal instrument may include provisions specifically authorizing leasing and/or resale and release of portions of the property as desired by the purchaser, provided that such provisions shall, in the judgment of the Government, be adequate to protect its security for the credit extended to the purchaser.

(2) In the case of timber or mineral lands, or lands containing other saleable products, the invitation shall state that the disposal instrument may specifically provide for granting future partial releases to permit the resale of timber, minerals, and other saleable products, or authorize the leasing of mineral rights, upon payment to the Government of such amounts as may be required by the Government but not less than the proceeds of any sale or lease less such amounts as may be determined by the Government to represent the cost of the sale or lease.

(3) All payments for such authorizations and/or releases shall, at the option of the Government, be applied against the unpaid balance of the indebtedness in inverse order of its maturity, or upon any delinquent installments of principal and interest, or used for payments of any delinquent taxes or insurance premiums.

(e) Where property is offered for disposal under a land contract or lease, the terms and conditions contained in the invitation shall provide that the purchaser or lessee will be required to pay to the proper taxing authorities or to the disposal agency, as may be directed, all taxes, payments in lieu of taxes (in the event of the existence or subsequent enactment of legislation authorizing such payments), assessments or similar charges which may be assessed or imposed on the property, or upon the occupier thereof, or upon the use or operation of the property and to assume all costs of operating obligations.

(f) Whenever property is offered for sale on credit terms or for lease, the terms and conditions contained in the invitation shall provide that the purchaser or lessee shall procure and maintain at his expense during the term credit is extended, or the period of the lease, such insurance in such amounts as may be required by the Government; required insurance shall be in companies acceptable to the Government and shall include such terms and provisions as may be required to provide coverage satisfactory to the Government.

[29 FR 16126, Dec. 3, 1964, as amended at 33 FR 12003, Aug. 23, 1968; 42 FR 47205, Sept. 20, 1977]

Sec. 101-47.304-5 Inspection.

All persons interested in the acquisition of surplus property available for disposal under this Subpart 101-47.3 shall, with the cooperation of the holding agency, where necessary, and with due regard to its program activities, be permitted to make a complete inspection of such property, including any available inventory records, plans, specifications, and engineering reports made in connection therewith, subject to any necessary restrictions in the interest of national security and subject to such rules as may be prescribed by the disposal agency.

(See Sec. 101-47.304-13 and Sec. 101-47.403.)

[53 FR 29894, Aug. 9, 1988]

Sec. 101-47.304-6 Submission of offers.

All offers to purchase or lease shall be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency and, in addition to the financial terms upon which the offer is predicated, shall set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and shall contain such other information as the disposal agency may request.

Sec. 101-47.304-7 Advertised disposals.

(a) All disposals or contracts for disposal of surplus property, except as provided in Secs. 101-47.304-9 and 101-47.304-10, shall be made after publicly advertising for bids.

(1) The advertising for bids shall be made at such time previous to the disposal or contract, through such methods and on such terms and conditions as shall permit that full and free competition which is consistent with the value and nature of the property involved. The advertisement shall designate the place to which the bids are to be delivered or mailed, and shall state the place, date, and time of public opening.

(2) All bids shall be publicly disclosed at the time and place stated in the advertisement.

(3) Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: Provided, That all bids may be rejected when it is in the public interest to do so.

(b) Disposal and contracts for disposal of surplus property may be made through contract auctioneers when authorized by GSA. The auctioneer retained under contract shall be required to publicly advertise for bids in accordance with the applicable provisions of this Sec. 101-47.304-7.

Sec. 101-47.304-8 [Reserved]

Sec. 101-47.304-9 Negotiated disposals.

(a) Disposal agencies shall obtain such competition as is feasible under the circumstances in all negotiations of disposals and contracts for disposal of surplus property. They may dispose of surplus property by negotiation only in the following situations:

(1) When the estimated fair market value of the property involved does not exceed \$15,000;

(2) When bid prices after advertising therefor are not reasonable (either as to all or some part of the property) or have not been independently arrived at in open competition;

(3) When the character or conditions of the property or unusual circumstances make it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation;

(4) When the disposals will be to States, Commonwealth of Puerto Rico, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(5) When negotiation is otherwise authorized by the Act or other law, such as:

(i) Disposals of power transmission lines for public or cooperative power projects (see Sec. 101-47.308-1).

(ii) Disposals for public airport utilization (see Sec. 101-47.308-2).

(b) Appraisal data required pursuant to the provisions of Sec. 101-47.303-4, when needed for the purpose of conducting negotiations under Sec. 101-47.304-9(a) (3), (4), or (5)(i) shall be obtained under contractual arrangements with experienced and qualified real estate appraisers familiar with the types of property to be appraised by them: Provided, however, That in any case where the cost of obtaining such data from a contract appraiser would be out of proportion to the

expected recoverable value of the property, or if for any other reason employing a contract appraiser would not be in the best interest of the Government, the head of the disposal agency or his designee should authorize any other method of obtaining an estimate of the fair market value of the property or the fair annual rental he may deem to be proper.

(c) Negotiated sales to public bodies under 40 U.S.C. 484(e)(3)(H) will be considered only when the disposal agency has made a determination that a public benefit will result from the negotiated sale which would not be realized from a competitive sale disposal. The offer to purchase and the conveyance document concerning such negotiated sales shall contain an excess profits covenant. A standard Excess Profits Covenant for Negotiated Sales to Public Bodies is illustrated in Sec. 101-47.4908. The standard covenant is provided as a guide, and appropriate modifications may be made provided that its basic purpose is retained. The disposal agency shall monitor the property involved and inspect records related thereto as necessary to ensure compliance with the terms and conditions of the sale and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

(d) The annual report of the Administrator under section 212 of the Act shall contain or be accompanied by a listing and description of any negotiated disposals of surplus real property having an estimated fair market value of over \$15,000, other than disposals for which an explanatory statement has been transmitted under Sec. 101-47.304-12.

[29 FR 16126, Dec. 3, 1964, as amended at 40 FR 22256, May 22, 1975; 51 FR 23760, July 1, 1986; 54 FR 12198, Mar. 24, 1989]

Sec. 101-47.304-10 Disposals by brokers.

Disposals and contracts for disposal of surplus property through contract realty brokers, where authorized by GSA, shall be made in the manner followed in similar commercial transactions. Realty brokers retained under contracts shall be required to give wide public notice of availability of the property for disposal.

Sec. 101-47.304-11 Documenting determinations to negotiate.

The disposal agency shall document the factors leading to and the determination justifying disposal by negotiation of any surplus property under Secs. 101-47.304-9 and 101-47.304-10, and shall retain such documentation in the files of the agency.

Sec. 101-47.304-12 Explanatory statements.

(a) Subject to the exception stated in Sec. 101-47.304-12(b), the disposal agency shall prepare an explanatory statement, as required by section 203(e)(6) of the Act, of the circumstances of each of the following proposed disposals by negotiation:

(1) Any real property that has an estimated fair market value in excess of \$100,000, except that any real property disposed of by lease or exchange shall only be subject to paragraphs (a) (2) through (4) of this section;

(2) Any real property disposed of by lease for a term of 5 years or less; if the estimated fair annual rent is in excess of \$100,000 for any of such years;

(3) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of \$100,000; or

(4) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(b) No explanatory statement need be prepared for a disposal of property authorized to be disposed of without advertising by any provision of law other than section 203(e) of the Act.

(c) An outline for the preparation of the explanatory statement is shown in Sec. 101-47.4911. A copy of the statement shall be preserved in the files of the disposal agency.

(d) Each explanatory statement when prepared shall be submitted to the Administrator of General Services for review and transmittal by the Administrator of General Services by letters to the Committees on Government Operations and any other appropriate committees of the Senate and House of Representatives. The submission to the Administrator of General Services shall include such supporting data as may be relevant and necessary for evaluating the proposed action.

(e) Copies of the Administrator of General Services' transmittal letters to the committees of the Congress, Sec. 101-47.304-12(d), will be furnished to the disposal agency.

(f) In the absence of adverse comment by an appropriate committee or subcommittee of the Congress on the proposed negotiated disposal, the disposal agency may consummate the sale on or after 35 days from the date of the Administrator of General Services letters transmitting the explanatory statement to the committees.

[29 FR 16126, Dec. 3, 1964, as amended at 41 FR 22354, June 3, 1976; 54 FR 12198, Mar. 24, 1989]

Sec. 101-47.304-13 Provisions relating to asbestos.

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with Sec. 101-47.202-2(b)(9), the disposal agency shall incorporate such information (less any cost or time estimates to remove the asbestos-containing materials) in any Invitation for Bids/Offer to Purchase and include the following:

Notice of the Presence of Asbestos--Warning!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (Offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Bidders (Offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser

against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that in its use and occupancy of the property it will comply with all Federal, state, and local laws relating to asbestos.

[53 FR 29894, Aug. 9, 1988]

Sec. 101-47.304-14 Provisions relating to hazardous substance activity.

(a) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with Sec. 101-47.202-2(b)(10), the disposal agency shall incorporate such information into any Invitation for Bids/Offer to Purchase and include the following statements:

"Notice regarding hazardous substance activity:

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), 42 U.S.C. section 9620(h). The (holding agency) advises that (provide information on the type and quantity of hazardous substances; the time at which storage, release, or disposal took place; and a description of the remedial action taken). All remedial action necessary to protect human health and the environment with respect to the hazardous substance activity during the time the property was owned by the United States has been taken. Any additional remedial action found to be necessary shall be conducted by the United States."

(b) In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance activity, the above statements must be modified as appropriate to properly represent the liability of the PRP for any remedial action.

[FTR Amdt. 16, 56 FR 15048, Apr. 15, 1991]

Sec. 101-47.305 Acceptance of offers.

Sec. 101-47.305-1 General.

(a) When the head of the disposal agency or his designee determines that bid prices (either as to all or some part of the property) received after advertising therefor or received in response to the action authorized in paragraph (b) of this Sec. 101-47.305-1, are reasonable, i.e., commensurate with the fair market value of the property, and were independently arrived at in open competition, award shall be made with reasonable promptness by notice to the bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. Any or all offers may be rejected when the head of the disposal agency or his designee determines it is in the public interest to do so.

(b) Where the advertising does not result in the receipt of a bid at a price commensurate with the fair market value of the property, the highest bidder may, at the discretion of the head of the disposal agency or his designee and upon determination of responsiveness and bidder

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responsibility, be afforded an opportunity to increase his offered price. The bidder shall be given a reasonable period of time, not to exceed fifteen working days, to respond. At the time the bidder is afforded an opportunity to increase his bid, all other bids shall be rejected and bid deposits returned. Any sale at a price so increased may be concluded without regard to the provisions of Sec. 101-47.304-9 and Sec. 101-47.304-12.

(c) The disposal agency shall allow a reasonable period of time within which the successful bidder shall consummate the transaction and shall notify the successful bidder of the period allowed.

(d) It is within the discretion of the head of the disposal agency or his designee to determine whether the procedure authorized by paragraph (b) of this Sec. 101-47.305-1 is followed or whether the bids shall be rejected and the property reoffered for sale on a publicly advertised competitive bid basis in accordance with the provisions of Sec. 101-47.304-7, or disposed of by negotiation pursuant to Sec. 101-47.306-1, or offered for disposal under other applicable provisions of this Subpart 101-47.3.

[29 FR 16126, Dec. 3, 1964, as amended at 50 FR 25223, June 18, 1985]

Sec. 101-47.305-2 Equal offers.

"Equal offers" means two or more offers that are equal in all respects, taking into consideration the best interests of the Government. If equal acceptable offers are received for the same property, award shall be made by a drawing by lot limited to the equal acceptable offers received.

Sec. 101-47.305-3 Notice to unsuccessful bidders.

When an offer for surplus real property has been accepted, the disposal agency shall notify all other bidders of such acceptance and return their earnest money deposits, if any.

Sec. 101-47.306 Absence of acceptable offers.

Sec. 101-47.306-1 Negotiations.

(a) When the head of the disposal agency or his designee determines that bid prices after advertising therefor (including the action authorized by the provisions of Sec. 101-47.305-1(b)) are not reasonable either as to all or some part of the property or were not independently arrived at in open competition and that a negotiated sale rather than a disposal by readvertising or under other applicable provisions of this subpart would better protect the public interest, the property or such part thereof may be disposed of by negotiated sale after rejection of all bids received: Provided, That no negotiated disposal may be made under this Sec. 101-47.306-1 unless:

(1) Notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head or his designee to each responsible bidder who submitted a bid pursuant to the advertising;

(2) The negotiated price is higher than the highest rejected bid price offered by any responsible bidder, as determined by the head of the agency or his designee; and

(3) The negotiated price is the highest negotiated price offered by any responsible prospective purchaser.

(b) Any such negotiated disposal shall be subject to the applicable provisions of Secs. 101-47.304-9 and 101-47.304-12.

Sec. 101-47.306-2 Defense Industrial Reserve properties.

In the event that any disposal agency is unable to dispose of any surplus industrial plant because of the application of the conditions and restrictions of the National Security Clause imposed under the Defense Industrial Reserve Act (50 U.S.C. 453), after making every practicable effort to do so, it shall notify the Secretary of Defense, indicating such modifications in the National Security Clause, if any, which in its

judgment will make possible the disposal of the plant. Upon agreement by the Secretary of Defense to any or all of such modifications, the plant shall be reoffered for disposal subject to such modifications as may have been so agreed upon; or if such modifications are not agreed to, and upon request of the Secretary of Defense, the plant shall be transferred to the custody of GSA.

[40 FR 12078, Mar. 17, 1975]

Sec. 101-47.307 Conveyances.

Sec. 101-47.307-1 Form of deed or instrument of conveyance.

Disposals of real property shall be by quitclaim deed or deed without warranty in conformity with local law and practice, unless the disposal agency finds that another form of conveyance is necessary to obtain a reasonable price for the property or to render the title marketable, and unless the use of such other form of conveyance is approved by GSA.

Sec. 101-47.307-2 Conditions in disposal instruments.

(a) Where a sale is made upon credit, the purchaser shall agree by appropriate provisions to be incorporated in the disposal instruments, that he will not resell or lease (unless due to its character or type the property was offered without leasing restrictions by the disposal agency) the property, or any part thereof or interest therein, without the prior written authorization of the disposal agency and such disposal instruments in appropriate cases may specifically provide for such authorization and/or future partial releases to be granted on terms which will adequately protect the Government's security for the credit extended to the purchaser.

(b) Except for exchange transactions initiated by the Federal Government for its own benefit, any disposition of land, or land and improvements located thereon, to public bodies by negotiation pursuant to Sec. 101-47.304-9(4) shall include in the deed or other disposal instrument a covenant substantially as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

(c) Any deed, lease, or other instrument executed to dispose of property under this subpart, subject to reservations, restrictions, or conditions as to the future use, maintenance, or transfer of the property shall recite all covenants, representations, and agreements pertaining thereto.

(d) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with Sec. 101-47.202-2(b)(10), the disposal agency shall incorporate such information into any deed, lease, or other instrument executed pursuant to part 101-47. See the language contained in Sec. 101-47.304-14. In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance activity, the language must be modified as appropriate to properly represent the liability of the PRP for any remedial action.

[29 FR 16126, Dec. 3, 1964, as amended at 33 FR 4408, Mar. 12, 1968; FR Amdt. 16, 56 FR 15049, Apr. 15, 1991]

Sec. 101-47.307-3 Distribution of conformed copies of conveyance instruments.

(a) Two conformed copies of any deed, lease, or other instrument containing reservations, restrictions, or conditions regulating the future use, maintenance, or transfer of the property shall be provided the agency charged with enforcement of such reservations, restrictions, or conditions.

(b) A conformed copy of the deed, lease, or other conveyance instrument shall be provided to the holding agency by the disposal agency.

Sec. 101-47.307-4 Disposition of title papers.

The holding agency shall, upon request, deliver to the disposal agency all title papers in its possession relating to the property reported excess. The disposal agency may transfer to the purchaser of the property, as a part of the disposal transaction, the pertinent records authorized by Sec. 101- 11.404-2, to be so transferred. If the purchaser of the property wishes to obtain additional records, copies thereof may be furnished to the purchaser at an appropriate charge, as determined by the agency having custody of the records.

[33 FR 572, Jan. 17, 1968]

Sec. 101-47.307-5 Title transfers from Government corporations.

In order to facilitate the administration and disposition of real property when record title to such property is not in the name of the United States of America, the holding agency, upon request of the Administrator of General Services, shall deliver to the disposal agency a quitclaim deed, or other instrument of conveyance without warranty, expressed or implied, transferring all of the right, title, and interest of the holding agency in such property to the United States of America.

Sec. 101-47.307-6 Proceeds from disposals.

All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 204(b)-(e) of the Act (40 U.S.C. 485(b)-(e)), or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation act) hereafter received from any sale, lease, or other disposition of surplus real property and related personal property shall be covered into the land and water conservation fund in the Treasury of the United States.

[30 FR 754, Jan. 23, 1965]

Sec. 101-47.308 Special disposal provisions.

Sec. 101-47.308-1 Power transmission lines.

(a) Pursuant and subject to the provisions of section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)), which is continued in effect by section 602(a) of the Federal Property and Administrative Services Act of 1949, any State or political subdivision thereof, or any State or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needful for or adaptable to the requirements of a public or cooperative power project. Disposal agencies shall notify such State entities and Government agencies of the availability of such property in accordance with Sec. 101- 47.303-2.

(b) Notwithstanding any other provisions of this subpart, whenever a State or political subdivision thereof, or a State or Government agency or instrumentality certifies that such property is needful for or adaptable to the requirements of a public or cooperative power project,

the property may be sold for such utilization at the fair market value thereof.

(c) In the event a sale cannot be accomplished by reason of the price to be charged or otherwise and the certification is not withdrawn, the disposal agency shall report the facts involved to the Administrator of General Services, for a determination by him as to the further action to be taken to dispose of the property.

(d) Any power transmission line and right-of-way not disposed of pursuant to the provisions of this section shall be disposed of in accordance with other applicable provisions of this subpart, including, if appropriate, reclassification by the disposal agency.

Sec. 101-47.308-2 Property for public airports.

(a) Pursuant and subject to the provisions of section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151), airport property may be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport. Airport property is any surplus real property including improvements and personal property located thereon as a part of the operating unit (exclusive of property the highest and best use of which is determined by the Administrator of General Services to be industrial and which shall be so classified for disposal without regard to the provisions of this section) which, in the determination of the Administrator of the Federal Aviation Administration (FAA) is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101), or reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from nonaviation businesses at a public airport.

(b) The disposal agency shall notify eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use as a public airport under the Act of 1944, as amended, has been determined to be surplus. There shall be transmitted with the copy of each such notice when sent to the proper regional office of the Federal Aviation Administration, Sec. 101-47.303-2(d), a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(c) As promptly as possible after receipt of the copy of the notice given to eligible public agencies and the copy of Standard Form 118, the Federal Aviation Administration shall inform the disposal agency of the determination of the Administrator of the Federal Aviation Administration required by the provisions of the Act of 1944, as amended. The Federal Aviation Administration, thereafter, shall render such assistance to any eligible public agency known to have a need for the property for a public airport as may be necessary for such need to be considered in the development of a comprehensive and coordinated plan of use and procurement for the property. An application form and instructions for the preparation of an application shall be furnished to the eligible public agency by the disposal agency upon request.

(d) Whenever an eligible public agency has submitted a plan of use and application to acquire property for a public airport, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan and two copies of the application to the proper regional office of the Federal Aviation Administration. The Federal Aviation Administration shall promptly submit to the disposal agency a recommendation for disposal of the property for a public airport or shall inform the disposal agency that no such recommendation will be submitted.

(e) Upon receipt of such recommendation, the disposal agency may, with the approval of the head of the disposal agency or his designee, convey property recommended by the Federal Aviation Administration for disposal for a public airport to the eligible public agency, subject to the provisions of the Surplus Property Act of 1944, as amended. Approval for aviation areas shall be based on established FAA

guidelines, criteria, and requirements for such areas. Approval for nonaviation revenue-producing areas shall be given only for such areas as are anticipated to generate net proceeds which do not exceed expected deficits for operation of the aviation area applied for at the airport.

(f) Any airport property not recommended by the Federal Aviation Administration for disposal pursuant to the provisions of this subsection for use as a public airport shall be disposed of in accordance with other applicable provisions of this subpart. However, the holding agency shall first be notified of the inability of the disposal agency to dispose of the property for use as a public airport and shall be allowed 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

(g) The Administrator of the Federal Aviation Administration has the sole responsibility for enforcing compliance with the terms and conditions of disposal, and for the reformation, correction, or amendment of any disposal instrument and the granting of releases and for taking any necessary action for recapturing such property in accordance with the provisions of the Act of October 1, 1949, 63 Stat. 700, and section 1402(c) of the Federal Aviation Act of 1958, 72 Stat. 807 (50 U.S.C. App. 1622a-1622c).

(h) In the event title to any such property is revested in the United States by reason of noncompliance with the terms and conditions of disposal, or other cause, the Administrator of the Federal Aviation Administration shall have accountability for the property and shall report the property to GSA as excess property in accordance with the provisions of Sec. 101-47.202.

(i) Section 23 of the Airport and Airway Development Act of 1970 (Airport Act of 1970) is not applicable to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be made only under section 13(g) of the Surplus Property Act of 1944 which is continued in effect by the Act. Only property which the holding agency determines cannot be reported excess to GSA for disposition under the Act, but which, nevertheless, may be made available for use by a State or local public body for public airport purposes without being inconsistent with the Federal program of the holding agency, may be conveyed under section 23 of the Airport Act of 1970. In the latter instance, section 23 may be used for the transfer of nonexcess land for airport development purposes providing that such real property does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 46305, Sept. 15, 1977; 48 FR 1301, Jan. 12, 1983; FMPR Amdt. H-192, 60 FR 35707, July 11, 1995]

Sec. 101-47.308-3 Property for use as historic monuments.

(a) Under section 203(k)(3) of the act, the disposal agency may, in its discretion, convey, without monetary consideration, to any State, political subdivision, instrumentalities thereof, or municipality, surplus real and related personal property for use as a historic monument for the benefit of the public provided the Secretary of the Interior has determined that the property is suitable and desirable for such use. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments. In addition, the disposal agency may authorize the use of property conveyed under subsection 203(k)(3) of the act or the Surplus Property Act of 1944, as amended, for revenue-producing activities if the Secretary of the Interior:

(1) Determines that such activities, as described in the applicant's proposed program of utilization, are compatible with the use of the property for historic monument purposes;

(2) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;

(3) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. The plan shall not be approved unless it provides that all incomes in excess of costs of repair, rehabilitation, restoration, maintenance and a specified reasonable profit or payment that may accrue to a lessor, sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities shall be used by the grantee, lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and

(4) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

(b) The disposal agency shall notify State and areawide clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use as a historic monument has been determined to be surplus. A copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules shall be transmitted with the copy of each such notice when it is sent to the proper regional office of the Bureau of Outdoor Recreation as provided in Sec. 101-47.303-2(d).

(c) Upon request, the disposal agency shall furnish eligible public agencies with an application form to acquire real property for permanent use as a historic monument and advise the potential applicant that it should consult with the appropriate Bureau of Outdoor Recreation Regional Office early in the process of developing the application.

(d) Eligible public agencies shall submit the original and two copies of the completed application to acquire real property for use as a historic monument in accordance with the provisions of Sec. 101-47.303-2 to the appropriate Bureau of Outdoor Recreation Regional Office which will forward one copy of the application to the appropriate regional office of the disposal agency. After consultation with the National Park Service, the Bureau of Outdoor Recreation shall promptly submit to the disposal agency the determination required of the Secretary of the Interior under section 203(k)(3) of the act for disposal of the property for a historic monument and compatible revenue-producing activities or shall inform the disposal agency that no such recommendation will be submitted.

(e) Upon receipt of the determination, the disposal agency may with the approval of the head of the disposal agency or his designee convey to an eligible public agency property determined by the Secretary of the Interior to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of section 203(k)(3) of the Act.

(f) The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(k)(4) of the act. Any such action shall be subject to the disapproval of the head of the disposal agency.

(g) The Department of the Interior shall notify the appropriate GSA regional Real Property Division, Public Buildings Service, immediately by letter when title to such historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification shall cite the legal and administrative actions that the Department must take to obtain full title and possession of the property. In addition, it shall include an adequate description of the property, including any improvements constructed thereon since the original conveyance to the grantee. Upon receipt of a statement from the Department that title to the property has been revested, GSA will assume custody and accountability of the property. However, the grantee shall be required to provide protection and maintenance of the property until such time as the title reverts to the Federal

Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[40 FR 22257, May 22, 1975, as amended at 49 FR 44472, Nov. 7, 1984]

Sec. 101-47.308-4 Property for educational and public health purposes.

(a) The head of the disposal agency or his designee is authorized, at his discretion: (1) To assign to the Secretary of the Department of Education (ED) for disposal under section 203(k)(1) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for school, classroom, or other educational use, or (2) to assign to the Secretary of Health and Human Services (HHS) for disposal under section 203(k)(1) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for use in the protection of public health, including research.

(b) With respect to real property and related personal property which may be made available for assignment to ED or HHS for disposal under section 203(k)(1) of the Act for educational or public health purposes, the disposal agency shall notify eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that such property has been determined to be surplus. Such notice to eligible public agencies shall state that any planning for an educational or public health use, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with ED or HHS, as appropriate, and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from ED or HHS. The requirement for educational or public health use of the property by an eligible public agency will be contingent upon the disposal agency's approval under (i), below, of a recommendation for assignment of Federal surplus real property received from ED or HHS and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(1) (A) or (B) of the Act and referenced in paragraph (j) of this section.

(c) With respect to surplus real property and related personal property which may be made available for assignment to either Secretary for disposal under section 203(k)(1) of the Act for educational or public health purposes to nonprofit institutions which have been held exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)), ED or HHS may notify eligible nonprofit institutions, in accordance with the provisions of Sec. 101-47.303-2(e), that such property has been determined to be surplus. Any such notice to eligible nonprofit institutions shall state that any requirement for educational or public health use of the property should be coordinated with the public agency declaring to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property. The requirement for educational or public health use of the property by an eligible nonprofit institution will be contingent upon the disposal agency's approval, under paragraph (i) of this section, of an assignment recommendation received from ED or HHS and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(1) (A) or (B) of the Act and referenced in (j) below.

(d) ED and HHS shall notify the disposal agency within 20-calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property. Whenever ED or HHS has notified the disposal agency within the said 20-calendar day period of a potential educational or public health requirement for the property, ED or HHS shall submit to the disposal agency within 25-calendar days after the expiration of the 20-calendar day period, a

recommendation for assignment of the property, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property.

(e) Whenever an eligible public agency has submitted a plan of use for property for an educational or public health requirement, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan to the regional office of ED or HHS as appropriate. ED or HHS shall submit to the disposal agency, within 25-calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS as appropriate.

(f) Any assignment recommendation submitted to the disposal agency by ED or HHS shall set forth complete information concerning the educational or public health use, including: (1) Identification of the property, (2) the name of the applicant and the size and nature of its program, (3) the specific use planned, (4) the intended public benefit allowance, (5) the estimate of the value upon which such proposed allowance is based, and, (6) if the acreage or value of the property exceeds the standards established by the Secretary, an explanation therefor. ED or HHS shall furnish to the holding agency a copy of the recommendation, unless the holding agency is also the disposal agency.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating thereto.

(h) In the absence of an assignment recommendation from ED or HHS submitted pursuant to Sec. 101-47.308-4 (d) or (e), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it shall assign the property by letter or other document to the Secretary of ED or HHS as appropriate. If the recommendation is disapproved, the disposal agency shall likewise notify the appropriate Department. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the disposal agency's letter of assignment, ED or HHS shall furnish to the disposal agency a Notice of Proposed Transfer in accordance with section 203(k)(1) (A) or (B) of the Act. If the disposal agency has not disapproved the proposed transfer within 30- calendar days of the receipt of the Notice of Proposed Transfer, ED or HHS may proceed with the transfer.

(k) ED or HHS shall furnish the Notice of Proposed Transfer within 35- calendar days after the disposal agency's letter of assignment and shall prepare the transfer documents and take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. ED or HHS shall furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(1) (A) or (B) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

(l) ED or HHS, as appropriate, has the responsibility for enforcing compliance with the terms and conditions of transfer; for the reformation, correction, or amendment of any transfer instrument; for the granting of releases; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of section 203(k)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by ED or HHS of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a terminated lease or reversion of title by reason of noncompliance with the terms or

conditions of sale or other cause, ED or HHS shall, at or prior to such repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from ED or HHS that such property has been repossessed or title has reverted, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[49 FR 3465, Jan. 27, 1984]

Sec. 101-47.308-5 Property for use as shrines, memorials, or for religious purposes.

(a) Surplus military chapels shall be segregated from other buildings, and shall be disposed of intact, separate and apart from the land, for use off-site as shrines, memorials, or for religious purposes, except in cases in which the chapel is located on surplus Government-owned land and the disposal agency determines that it may properly be used in place, in which cases a suitable area of land may be set aside for such purposes, and sold with the chapel.

(1) Application. Applications for the purchase of surplus chapels for use off-site or for use in-place shall be solicited by public advertising. All applications received in response to advertising shall be submitted to the Chief of Chaplains of the service which had jurisdiction over the property during the period of Government use thereof for military purposes and shall be disposed of in accordance with his recommendation. If no recommendation is received from the Chief of Chaplains within 30 days from the date of such submission, the disposal agency may select the purchaser on the basis of the needs of the applicants and the best interests of the community to be served. If no application is received for transfer of the property for shrine, memorial, or religious uses, the Chief of Chaplains shall be notified accordingly, and disposal of the property shall be held in abeyance for a period not to exceed 60 days thereafter to afford additional time for the filing of applications. If no such application is received during the extended period, the property may be disposed of for uses other than shrine, memorial, or religious purposes pursuant to other applicable provisions of this subpart.

(2) Sale price. The sale price of the chapel shall be a price equal to its appraised fair market value in the light of conditions imposed relating to its future use and the estimated cost of removal, where required. The sale price of the land shall be a price equal to the appraised fair market value of the land based upon the highest and best use of the land at the time of the disposal.

(3) Conditions of transfer. All chapels disposed of pursuant to the authority of this section shall be transferred subject to the condition that during the useful life thereof they be maintained and used as shrines, memorials, or for religious purposes and not for any commercial, industrial, or other secular use; and that in the event a transferee fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference between the appraised fair market value of the chapel, as of the date of the transfer, without restrictions on its use, and the price actually paid. Where the land on which the chapel is located is sold with the chapel, no conditions or restrictions on the use of the land shall be included in the deed.

(4) Release of restrictions. The disposal agency may release the conditions of transfer without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was transferred or that such release will not prevent accomplishment of the purpose for which the property was transferred. Such determination shall be in writing, shall state the facts and

circumstances involved, and shall be preserved in the files of the disposal agency.

(b) Notwithstanding the provisions of this Sec. 101-47.308-5, a chapel and underlying land that is a component unit of a larger parcel of surplus real property recommended by the Secretary of Health, Education, and Welfare as being needed for educational or public health purposes, may be included in an assignment of such property, when so recommended by the Secretary, for disposal subject to the condition that the instrument of conveyance shall require that during the useful life of the chapel it shall be maintained and used by the grantee as a shrine, memorial, or for religious purposes.

Sec. 101-47.308-6 Property for housing and related facilities.

(a) Under section 414(a) of the Housing and Urban Development Act of 1969, as amended (40 U.S.C. 484b), the disposal agency may, in its discretion, transfer (assign) surplus real property to the Secretary of Housing and Urban Development or to the Secretary of Agriculture acting through the Farmers Home Administration (FmHA) at the request of either, for sale or lease by the appropriate Secretary at its fair value for use in the provision of housing to be occupied predominantly by families or individuals of low or moderate income and for related public commercial or industrial facilities approved by the appropriate Secretary.

(b) Upon receipt of the notice of determination of surplus (Sec. 101-47.204-1(a)), HUD or FmHA may solicit applications from eligible applicants.

(c) HUD or FmHA shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it is able to interest an eligible applicant in acquiring the property under section 414(a) of the 1969 HUD Act, as amended.

(d) Both holding and disposal agencies shall cooperate, to the fullest extent possible, with representatives of HUD or FmHA in their inspection of such property and in furnishing information relating thereto.

(e) HUD or FmHA shall advise the disposal agency and request transfer of the property for disposition under section 414(a) of the 1969 HUD Act, as amended, within 25 calendar days after the expiration of the 20-calendar-day period specified in Sec. 101-47.308-6(c).

(f) Any request submitted by HUD or FmHA pursuant to Sec. 101-47.308-6(e) shall set forth complete information concerning the intended use, including:

(1) Identification of the property; (2) a summary of the background of the proposed project, including a map or plat of the property; (3) whether the property is to be sold or leased to a public body or to an entity other than a public body which will use the land in connection with the development of housing to be occupied predominantly by families or individuals of low and moderate income, assisted under a Federal housing assistance program administered by the appropriate Secretary or under a State or local program found by the appropriate Secretary to have the same general purpose, and related public commercial or industrial facilities approved by the appropriate Secretary; (4) HUD's or FmHA's best estimate of the fair value of the property and the price at which it will be sold by HUD or FmHA; (5) how the property is to be used (i.e., single or multifamily housing units, the number of housing units proposed, types of facilities, and the estimated cost of construction); (6) an estimate as to the dates construction will be started and completed; and (7) what reversionary provisions will be included in the deed or the termination provisions that will be included in the lease. It is suggested that this information, except for the map or plat of the property, be furnished in the body of the letter transfer request signed by the Secretary of Housing and Urban Development or the Secretary of Agriculture or his designee.

The above data will be used by GSA in preparing and submitting a statement relative to the proposed transaction to the Senate Committee

on Governmental Affairs and the House Committee on Government Operations prior to the transfer of the property to HUD or FmHA.

(g) In the absence of a notice under paragraph (c) of this section or a request under paragraph (e) of this section, the disposal agency shall proceed with the appropriate disposal action.

(h) If, after considering other uses for the property, the disposal agency determines that the property should be made available to HUD or FmHA under section 414(a) of the 1969 HUD Act, as amended, it shall transfer the property to the appropriate agency upon its request.

(i) The transferee agency shall bear the costs of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as surveys, fencing, security, etc., of the remaining property or otherwise. In addition, the transferee agency shall be responsible for any protection and maintenance expenses after the property is transferred to the agency.

(j) The disposal agency, if it approves the request, shall transfer the property by letter or other document to HUD or FmHA for disposal under section 414(a) of the 1969 HUD Act, as amended. If the request is disapproved, the disposal agency shall so notify the appropriate Secretary. The disposal agency shall furnish the holding agency a copy of the transfer or notice of disapproval.

(k) The transferee agency shall prepare the disposal document and take all other actions necessary to accomplish the disposition of the property under section 414(a) of the 1969 HUD Act, as amended, within 120 calendar days after the date of the transfer of the property to the agency.

(l) If any property conveyed under section 414(a) of the 1969 HUD Act, as amended, to an entity other than a public body is used for any purpose other than the purpose for which it was sold or leased within a period of 30 years of the conveyance, it shall revert to the United States (or, in the case of leased property, the lease shall terminate) unless the appropriate Secretary and the Administrator of General Services, after the expiration of the first 20 years of such period, approve the use of the property for such other purpose.

(m) The transferee agency shall furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under section 414(a) of the 1969 HUD Act, as amended, and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance, or transfer of the property.

(n) In each case of reversion of title by reason of noncompliance with the terms and conditions of sale or other cause, HUD or FmHA shall, prior to or at the time of such reversion, provide GSA with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from HUD or FmHA that title has reverted, GSA will assume accountability therefor.

[47 FR 37176, Aug. 25, 1982]

Sec. 101-47.308-7 Property for use as public park or recreation areas.

(a) The head of the disposal agency or his designee is authorized, in his discretion, to assign to the Secretary of the Interior for disposal under section 203(k)(2) of the Act for public park or recreation purposes, such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for use as a public park or recreation area for disposal by the Secretary to a State, political subdivision, instrumentalities thereof, or municipality.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use as a public park or recreation area has been determined to be surplus. There shall be transmitted with the copy of each such notice, when sent to the proper field office of the

Bureau of Outdoor Recreation, a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(c) An application form to acquire property for permanent use as a public park or recreation area and instructions for the preparation of the application shall be furnished by the Department of the Interior upon request.

(d) The Department of the Interior shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property under section 203(k)(2) of the Act.

(e) Holding agencies shall cooperate to the fullest extent possible with representatives of the Department of the Interior in their inspection of such property and in furnishing information relating thereto.

(f) The Department of the Interior shall advise the disposal agency and request assignment of the property for disposition under section 203(k)(2) of the Act, as amended, within 25 calendar days after the expiration of the 20- calendar-day period specified in paragraph (d) of this section.

(g) Any recommendation submitted by the Department of the Interior pursuant to paragraph (f) of this section shall set forth complete information concerning the plans for use of the property as a public park or recreation area, including (1) identification of the property, (2) the name of the applicant, (3) the specific use planned, and (4) the intended public benefit allowance. A copy of the application together with any other pertinent documentation shall be submitted with the recommendation.

(h) In the absence of a notice under paragraph (d) of this section or a request under paragraph (f) of this section, the disposal agency shall proceed with the appropriate disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from the Department of the Interior, it shall assign the property by letter or other document to the Secretary of the Interior. If the recommendation is disapproved, the disposal agency shall likewise notify the Secretary. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the disposal agency's letter of assignment, the Secretary of the Interior shall furnish to the disposal agency a Notice of Proposed Transfer, in accordance with section 203(k)(2)(A) of the Act. If the disposal agency has not disapproved the proposed transfer within 30-calendar days of the receipt of the Notice of Proposed Transfer, the Secretary may proceed with the transfer.

(k) The disposal agency may, where appropriate, make the assignment subject to the Department of the Interior requiring the applicant to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as surveys, fencing, security of the remaining property or otherwise.

(l) In the absence of the notice of disapproval by the disposal agency upon expiration of the 30-day period, or upon earlier advice from the disposal agency of no objection to the proposed transfer, the Department of the Interior may place the applicant in possession of the property as soon as practicable in order to minimize the Government's expense of protection and maintenance of the property. As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the applicant shall assume responsibility for care and handling and all risks of loss or damage to the property, and shall have all obligations and liabilities of ownership.

(m) The Department of the Interior shall furnish the Notice of Proposed Transfer within 35-calendar days after the disposal agency's letter of assignment and shall take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30- calendar day period provided for the disposal agency to consider the notice.

(n) The deed of conveyance of any surplus real property transferred under the provision of section 202(k)(2) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event that such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Secretary of the Interior to be necessary to safeguard the interest of the United States.

(o) The Department of the Interior shall furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under section 203(k)(2) of the Act and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

(p) The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of transfer; the reformation, correction, or amendment of any transfer instrument; the granting of releases; and any necessary actions for recapturing such property in accordance with the provisions of section 202(k)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by the Secretary of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(q) The Department of the Interior shall notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be reverted in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification shall cite the legal and administrative actions that the Department must take to obtain full title and possession of the property. In addition, it shall include an adequate description of the property, including any improvements constructed thereon since the original conveyance to the grantee. Upon receipt of a statement from the Department that title to the property has reverted, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[36 FR 9776, May 28, 1971, as amended at 49 FR 3467, Jan. 27, 1984]

Sec. 101-47.308-8 Property for displaced persons.

(a) Pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the disposal agency is authorized to transfer surplus real property to a State agency, as hereinafter provided, for the purpose of providing replacement housing under title II of this Act for persons who are to be displaced by Federal or federally assisted projects.

(b) Upon receipt of the notice of surplus determination (Sec. 101-47.204-1(a)), any Federal agency having a requirement for such property for housing for displaced persons may solicit applications from eligible State agencies.

(c) Federal agencies shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it is able to interest an eligible State agency in acquiring the property under section 218.

(d) Both holding and disposal agencies shall cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(e) The interested Federal agency shall advise the disposal agency and request transfer of the property to the selected State agency under

section 218 within 25 calendar days after the expiration of the 20-calendar-day period specified in Sec. 101-47.308-8(c).

(f) Any request submitted by a Federal agency pursuant to Sec. 101-47.308-8(e) shall be in the form of a letter addressed to the appropriate GSA regional office and shall set forth the following information:

(1) Identification of the property by name, location, and control number; (2) a request that the property be transferred to a specific State agency including the name and address and a copy of the State agency's application or proposal; (3) a certification by the appropriate Federal agency official that the property is required for housing for displaced persons pursuant to section 218, that all other options authorized under title II of the Act have been explored and replacement housing cannot be found or made available through those channels, and that the Federal or federally assisted project cannot be accomplished unless the property is made available for replacement housing; (4) any special terms and conditions that the Federal agency desires to include in conveyance instruments to insure that the property is used for the intended purpose; (5) identification by name and proposed location of the Federal or federally assisted project which is creating the requirement; (6) purpose of the project; (7) citation of enabling legislation or authorization for the project when appropriate; (8) a detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Act; and (9) arrangements that have been made to construct replacement housing on the surplus property and to insure that displaced persons will be provided housing in the development.

(g) In the absence of a notice under Sec. 101-47.308-8(c) or a request under Sec. 101-47.308-8(e), the disposal agency shall proceed with the appropriate disposal action.

(h) If, after considering other uses for the property, the disposal agency determines that the property should be made available for replacement housing under section 218, it shall transfer the property to the designated State agency on such terms and conditions as will protect the interest of the United States, including the payment or the agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency shall be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value, in which event the disposal may be made at such other value as is approved by the disposal agency.

(i) The State agency shall bear the costs of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as costs of surveys, fencing, or security of the remaining property.

(j) The disposal agency, if it approves the request, shall transfer the property to the designated State agency. If the request is disapproved, the disposal agency shall notify the Federal agency requesting the transfer. The disposal agency shall furnish the holding agency a copy of the transfer or notice of disapproval, and the Federal agency requesting the transfer a copy of the transfer when appropriate.

[36 FR 11439, June 12, 1971]

Sec. 101-47.308-9 Property for correctional facility use.

(a) Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his/her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision or instrumentality thereof, surplus real and related personal property for correctional facility use, provided the Attorney General has determined that the property is required for correctional facility use and has approved an appropriate program or project for the care or rehabilitation of criminal offenders.

(b) The disposal agency shall provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ) of the

availability of surplus properties. Included in the notification to OJP will be a copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules.

(c) With respect to real property and related personal property which may be made available for disposal under section 203(p)(1) of the Act for correctional facility purposes, OJP shall convey notices of availability of properties to the appropriate State and local public agencies. Such notice shall state that any planning for correctional facility use involved in the development of a comprehensive and coordinated plan of use and procurement for the property must be coordinated and approved by the OJP and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from OJP. The requirement for correctional facility use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (g) of this section of a determination by DOJ that identifies surplus property required for correctional facility use under an appropriate program or project for the care of rehabilitation of criminal offenders.

(d) OJP shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever OJP has notified the disposal agency within the said 20 calendar-day period of a potential correctional facility requirement for the property, OJP shall submit to the disposal agency within 25 calendar days after the expiration of the 20 calendar-day period, a determination indicating a requirement for the property and approving an appropriate program or project for the care or rehabilitation of criminal offenders, or shall inform the disposal agency, within the 25 calendar-day period, that the property will not be required for correctional facility use.

(e) Any determination submitted to the disposal agency by DOJ shall set forth complete information concerning the correctional facility use, including:

- (1) Identification of the property,
 - (2) Certification that the property is required for correctional facility use,
 - (3) A copy of the approved application which defines the proposed plan of use, and
 - (4) The environmental impact of the proposed correctional facility.
- (f) Both holding and disposal agencies shall cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(g) If, after considering other uses for the property, the disposal agency approves the determination by DOJ, it shall convey the property to the appropriate grantee. If the determination is disapproved, or in the absence of a determination from DOJ submitted pursuant to Sec. 101-47.308-9(d), and received within the 25 calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action. The disposal agency shall notify OJP 10 days prior to any announcement of a determination to either approve or disapprove an application for correctional purposes and shall furnish to OJP a copy of the conveyance documents.

(h) The deed of conveyance of any surplus real property transferred under the provisions of section 203(p)(1) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity and that in the event such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator of General Services to be necessary to safeguard the interest of the United States.

(i) The Administrator of General Services has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the

granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(p)(3) of the Act.

(j) The OJP will notify GSA upon discovery of any information indicating a change in use and, upon request, make a redetermination of continued appropriateness of the use of a transferred property.

(k) In each case of repossession under a reversion of title by reason of noncompliance with the terms of the conveyance documents, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[52 FR 9832, Mar. 27, 1987]

Sec. 101-47.308-10 Property for port facility use.

(a) Under section 203(q)(1) of the Act, in his/her discretion, the Administrator, the Secretary of the Department of Defense (DOD) in the case of property located at a military installation closed or realigned pursuant to a base closure law, or the designee of either of them, may, as the disposal agency, assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision, municipality, or instrumentality thereof, such surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, as is recommended by DOT as being needed for the development or operation of a port facility.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use in the development or operation of a port facility has been determined to be surplus. A copy of such notice shall be transmitted to DOT accompanied by a copy of the holding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

(c) The notice to eligible public agencies shall state:

(1) that any planning for the development or operation of a port facility, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with DOT;

(2) that any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for instructions concerning submission of an application; and

(3) that the requirement for use of the property in the development or operation of a port facility will be contingent upon approval by the disposal agency, under paragraph (i) of this section, of a recommendation from DOT for assignment of the property to DOT and that any subsequent conveyance shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(q)(2) of the Act and referenced in paragraph (j) of this subsection.

(d) DOT shall notify the disposal agency within 20 calendar-days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever the disposal agency, has been so notified of a potential port facility requirement for the property, DOT shall submit to the disposal agency, within 25 calendar-days after the expiration of the 20-calendar-day notification period, either a recommendation for assignment of the property or a statement that a recommendation will not be submitted.

(e) Whenever an eligible public agency has submitted a plan of use for property for a port facility requirement, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan to DOT. DOT shall either submit to the disposal agency, within 25 calendar-days after the date the plan is transmitted, a

recommendation for assignment of the property to DOT, or inform the disposal agency, within the 25-calendar-day period, that a recommendation will not be made for assignment of the property to DOT.

(f) Any assignment recommendation submitted to the disposal agency by DOT shall be accompanied by a copy of the explanatory statement required under section 203(q)(3)(C) of the Act and shall set forth complete information concerning the contemplated port facility use, including:

- (1) an identification of the property;
- (2) an identification of the applicant;
- (3) a copy of the approved application, which defines the proposed plan of use of the property;
- (4) a statement that DOT's determination that the property is located in an area of serious economic disruption was made in consultation with the Secretary of Labor; and
- (5) a statement that DOT's approval of the economic development plan associated with the plan of use of the property was made in consultation with the Secretary of Commerce.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of DOT and the Secretary of Commerce in their inspection of such property, and of the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating thereto.

(h) In the absence of an assignment recommendation from DOT submitted pursuant to paragraph (d) or (e) of this section, and received within the 25- calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, it shall assign the property by letter or other document to DOT. If the recommendation is disapproved, the disposal agency shall likewise notify DOT. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the letter of assignment from the disposal agency, DOT shall furnish to the disposal agency, a Notice of Proposed Conveyance in accordance with section 203(q)(2) of the Act. If the disposal agency has not disapproved the proposed transfer within 35 calendar-days of the receipt of the Notice of Proposed Conveyance, DOT may proceed with the conveyance.

(k) DOT shall furnish the Notice of Proposed Conveyance within 35 calendar- days after the date of the letter of assignment from the disposal agency, prepare the conveyance documents, and take all necessary actions to accomplish the conveyance within 15 calendar-days after the expiration of the 30-calendar-day period provided for the disposal agency to consider the notice. DOT shall furnish the disposal agency two conformed copies of the instruments conveying property under subsection 203(q) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

(l) DOT has the responsibility for enforcing compliance with the terms and conditions of conveyance; for reformation, correction, or amendment of any instrument of conveyance; for the granting of release; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of subsection 203(q)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency, by DOT, of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a reversion of title by reason of noncompliance with the terms or conditions of conveyance or other cause, DOT shall, at or prior to such reversion of title, provide the appropriate GSA regional office, with an accurate description of the real and related personal property involved. Standard Form 118, Report

of Excess Real Property, and appropriate accompanying schedules shall be used for this purpose. Upon receipt of advice from DOT that such property has been repossessed, GSA will review and act upon the Standard Form 118. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[FMPR Amdt. H-192, 60 FR 35707, July 11, 1995]

Sec. 101-47.309 Disposal of leases, permits, licenses, and similar instruments.

The disposal agency may, subject to such reservations, restrictions, and conditions, if any, as the disposal agency deems necessary properly to protect the interests of the United States against liability under a lease, permit, license, or similar instrument:

(a) Dispose of the lease or other instrument subject to assumption by the transferee of the obligations in the lease or other instrument unless a transfer is prohibited by the terms of the lease or other instrument; or

(b) Terminate the lease or other instrument by notice or negotiated agreement; and

(c) Dispose of any surplus Government-owned improvements located on the premises in the following order by any one or more of the following methods:

(1) By disposition of all or a portion thereof to the transferee of the lease or other instrument (not applicable when the lease or other instrument is terminated);

(2) By disposition to the owner of the premises or grantor of a sublease, as the case may be, (i) in full satisfaction of a contractual obligation of the Government to restore the premises, or (ii) in satisfaction of a contractual obligation of the Government to restore the premises plus the payment of a money consideration to the Government by the owner or grantor, as the case may be, that is fair and reasonable under the circumstances, or (iii) in satisfaction of a contractual obligation of the Government to restore the premises plus the payment by the Government to the owner or grantor, as the case may be, of a money consideration that is fair and reasonable under the circumstances; or

(3) By disposition for removal from the premises. Provided, That any negotiated disposals shall be subject to the applicable provisions of Secs. 101-47.304-9 and 101-47.30-12. The cancellation of the Government's restoration obligations in return for the conveyance of the Government-owned improvements to the lessor is considered a settlement of a contractual obligation rather than a disposal of surplus real property and, therefore, is not subject to the provisions of Secs. 101-47.304-9 and 101- 47.304-12.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966]

Sec. 101-47.310 Disposal of structures and improvements on Government-owned land.

In the case of Government-owned land, the disposal agency may dispose of structures and improvements with the land or separately from the land: Provided, That prefabricated movable structures such as Butler-type storage warehouses, and quonset huts, and house trailers (with or without under carriages) reported to GSA with the land on which they are located, may, in the discretion of GSA, be designated for disposal as personal property for off-site use.

Sec. 101-47.311 Disposal of residual personal property.

(a) Any related personal property reported to GSA on Standard Form 118 which is not disposed of by GSA as related to the real property, shall be designated by GSA for disposal as personal property.

(b) Any related personal property which is not disposed of by the holding agency, pursuant to the authority contained in Sec. 101-47.302, or authority otherwise delegated by the Administrator of General Services as related to the real property, shall be disposed of under the applicable provisions of Part 101-45.

Sec. 101-47.312 Non-Federal interim use of property.

(a) A lease or permit may be granted by the holding agency with the approval of the disposal agency, for non-Federal interim use of surplus property; Provided, That such lease or permit shall be for a period not exceeding 1 year and shall be made revocable on not to exceed 30 days' notice by the disposal agency; And provided further, That the use and occupancy will not interfere with, delay, or retard the disposal of the property. In such cases, an immediate right of entry to such property may be granted pending execution of the formal lease or permit. The lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate to properly protect the interest of the United States. Any negotiated lease or permit under this section shall be subject to the applicable provisions of Secs. 101-47.304-9 and 101-47.304-12, except that no explanatory statement to the appropriate committees of the Congress need to be prepared with respect to a negotiated lease or permit providing for an annual net rental of \$100,000 or less, and termination by either part on 30 days' notice.

(b) [Reserved. 54 FR 41245, Oct. 6, 1989]

[54 FR 41245, Oct. 6, 1989]

Sec. 101-47.313 Easements.

Sec. 101-47.313-1 Disposal of easements to owner of servient estate.

The disposal agency may dispose of an easement to the owner of the land which is subject to the easement when the continued use, occupancy, or control of the easement is not needed for the operation, production, use, or maintenance of property owned or controlled by the Government. A determination shall be made by the disposal agency as to whether the disposal shall be with or without consideration to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost of the easement to the Government. The extent of such consideration shall be regarded as the appraised fair market value of the easement. The disposal agency shall document the circumstances and factors leading to such determination and retain such documentation in its files.

Sec. 101-47.313-2 Grants of easements in or over Government property.

The disposal agency may grant easements in or over real property on appropriate terms and conditions: Provided, That where the disposal agency determines that the granting of such easement decreases the value of the property, the granting of the easement shall be for a consideration not less than the amount by which the fair market value of the property is decreased.

Sec. 101-47.314 Compliance.

Sec. 101-47.314-1 General.

Subject to the provisions of Sec. 101-47.314-2(a), requiring referral of criminal matters to the Department of Justice, each disposal agency shall perform such investigatory functions as are necessary to insure compliance with the provisions of the Act and with the regulations, orders, directives, and policy statements of the Administrator of General Services.

Sec. 101-47.314-2 Extent of investigations.

(a) Referral to other Government agencies. All information indicating violations by any person of Federal criminal statutes, or violations of section 209 of the Act, including but not limited to fraud against the Government, mail fraud, bribery, attempted bribery, or criminal collusion, shall be referred immediately to the Department of Justice for further investigation and disposition. Each disposal agency shall make available to the Department of Justice, or to such other governmental investigating agency to which the matter may be referred by the Department of Justice, all pertinent information and evidence concerning the indicated violations; shall desist from further investigation of the criminal aspects of such matters except upon the request of the Department of Justice; and shall cooperate fully with the agency assuming final jurisdiction in establishing proof of criminal violations. After making the necessary referral to the Department of Justice, inquiries conducted by disposal agency compliance organizations shall be limited to obtaining information for administrative purposes. Where irregularities reported or discovered involve wrongdoing on the part of individuals holding positions in Government agencies other than the agency initiating the investigation, the case shall be reported immediately to the Administrator of General Services for an examination in the premises.

(b) Compliance reports. A written report shall be made of all compliance investigations conducted by each agency compliance organization. Each disposal agency shall maintain centralized files of all such reports at its respective departmental offices. Until otherwise directed by the Administrator of General Services, there shall be transmitted promptly to the Administrator of General Services one copy of any such report which contains information indicating criminality on the part of any person or indicating noncompliance with the Act or with the regulations, orders, directives and policy statements of the Administrator of General Services. In transmitting such reports to the Administrator of General Services, the agency shall set forth the action taken or contemplated by the agency to correct the improper conditions established by the investigation. Where any matter is referred to the Department of Justice, a copy of the letter of referral shall be transmitted to the Administrator of General Services.

Subpart 101-47.4--Management of Excess and Surplus Real Property

Sec. 101-47.400 Scope of subpart.

This subpart prescribes the policies and methods governing the physical care, handling, protection, and maintenance of excess real property and surplus real property, including related personal property, within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

[47 FR 4522, Feb. 1, 1982]

Sec. 101-47.401 General provisions of subpart.

Sec. 101-47.401-1 Policy.

It is the policy of the Administrator of General Services:

(a) That the management of excess real property and surplus real property, including related personal property, shall provide only those minimum services necessary to preserve the Government's interest therein, realizable value of the property considered.

(b) To place excess real property and surplus real property in productive use through interim utilization: Provided, That such temporary use and occupancy will not interfere with, delay, or retard its transfer to a Federal agency or disposal.

(c) That excess and surplus real property which is dangerous to the public health or safety shall be destroyed or rendered innocuous.

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Sec. 101-47.401-2 Definitions.

As used in this subpart, the following terms shall have the meanings set forth below:

(a) **Maintenance.** The upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including water supply and sewerage systems, heating, plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment.

(b) **Repairs.** Those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

Sec. 101-47.401-3 Taxes and other obligations.

Payments of taxes or payments in lieu of taxes (in the event of the enactment hereafter of legislation by Congress authorizing such payments upon Government-owned property which is not legally assessable), rents, and insurance premiums and other obligations pending transfer or disposal shall be the responsibility of the holding agency.

Sec. 101-47.401-4 Decontamination.

The holding agency shall be responsible for all expense to the Government and for the supervision of decontamination of excess and surplus real property that has been subjected to contamination with hazardous materials of any sort. Extreme care must be exercised in the decontamination, and in the management and disposal of contaminated property in order to prevent such properties becoming a hazard to the general public. The disposal agency shall be made cognizant of any and all inherent hazards involved relative to such property in order to protect the general public from hazards and to preclude the Government from any and all liability resulting from indiscriminate disposal or mishandling of contaminated property.

Sec. 101-47.401-5 Improvements or alterations.

Improvements or alterations which involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in structures, utilities, installations, and land betterments, may be considered in those cases where disposal cannot otherwise be made, but no commitment therefor shall be entered into without prior approval of GSA.

Sec. 101-47.401-6 Interim use and occupancy.

When a revocable agreement to place excess real property or surplus real property in productive use has been made, the agency executing the agreement shall be responsible for the servicing thereof.

Sec. 101-47.402 Protection and maintenance.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.402-1 Responsibility.

The holding agency shall retain custody and accountability for excess and surplus real property including related personal property and shall perform the protection and maintenance of such property pending its transfer to another Federal agency or its disposal. Guidelines for protection and maintenance of excess and surplus real property are in Sec. 101-47.4913. The holding agency shall be responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.402-2 Expense of protection and maintenance.

(a) The holding agency shall be responsible for the expense of protection and maintenance of such property pending transfer or disposal for not more than 12 months, plus the period to the first day of the succeeding quarter of the fiscal year after the date that the property is available for immediate disposition. If the holding agency requests deferral of the disposal, continues to occupy the property beyond the excess date to the detriment of orderly disposal, or otherwise takes actions which result in a delay in the disposition, the period for which that agency is responsible for such expenses shall be extended by the period of delay. (See Sec. 101-47.202-9.)

(b) In the event the property is not transferred to a Federal agency or disposed of during the period mentioned in paragraph (a) of this section, the expense of protection and maintenance of such property from and after the expiration date of said period shall be either paid or reimbursed to the holding agency, subject to the limitations herein, which payment or reimbursement shall be in the discretion of the disposal agency. The maximum amount of protection and maintenance to be paid or reimbursed by the disposal agency will be specified in a written agreement between the holding agency and the disposal agency, but such payment or reimbursement is subject to the appropriations by Congress to the disposal agency of funds sufficient to make such payment or reimbursement. In accordance with the written agreement, the disposal agency and the holding agency will sign an obligational document only if and when Congress actually appropriates to the disposal agency, pursuant to its request, funds sufficient to pay or reimburse the holding agency for protection and maintenance expenses, as agreed. In the absence of a written agreement, the holding agency shall be responsible for all expenses of protection and maintenance, without any right of contribution or reimbursement from the disposal agency.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.403 Assistance in disposition.

The holding agency is expected to cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the holding agency shall absorb the entire cost of such actions. (See Sec. 101-47.304-5.)

[36 FR 3894, Mar. 2, 1971]

Subpart 101-47.5--Abandonment, Destruction, or Donation to Public Bodies

Sec. 101-47.500 Scope of subpart.

(a) This subpart prescribes the policies and methods governing the abandonment, destruction, or donation to the public bodies by Federal agencies of real property located within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) The subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to section 203(k) of the Act.

[29 FR 16126, Dec. 3, 1964, as amended at 47 FR 4522, Feb. 1, 1982]

Sec. 101-47.501 General provisions of subpart.

Sec. 101-47.501-1 Definitions.

(a) "No commercial value" means real property, including related personal property, which has no reasonable prospect of being disposed of at a consideration.

(b) "Public body" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

Sec. 101-47.501-2 Authority for disposal.

Subject to the restrictions in Sec. 101-47.502 and Sec. 101-47.503, any Federal agency having control of real property which has no commercial value or of which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale, is authorized:

(a) To abandon or destroy Government-owned improvements and related personal property located on privately owned land.

(b) To destroy Government-owned improvements and related personal property located on Government-owned land. Abandonment of such property is not authorized.

(c) To donate to public bodies any real property (land and/or improvements and related personal property), or interests therein, owned by the Government.

Sec. 101-47.501-3 Dangerous property.

No property which is dangerous to public health or safety shall be abandoned, destroyed, or donated to public bodies pursuant to this subpart without first rendering such property innocuous or providing adequate safeguards therefor.

Sec. 101-47.501-4 Findings.

(a) No property shall be abandoned, destroyed, or donated by a Federal agency under Sec. 101-47.501-2, unless a duly authorized official of that agency finds, in writing, either that (1) such property has no commercial value, or (2) the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. Such finding shall not be made by any official directly accountable for the property covered thereby.

(b) Whenever all the property proposed to be disposed of hereunder by a Federal agency at any one location at any one time had an original cost (estimated if not known) of more than \$1,000, findings made under Sec. 101-47.501-4(a), shall be approved by a reviewing authority before any such disposal.

Sec. 101-47.502 Donations to public bodies.**Sec. 101-47.502-1 Cost limitations.**

No improvements on land or related personal property having an original cost (estimated if not known) in excess of \$250,000 and no land, regardless of cost, shall be donated to public bodies without the prior concurrence of GSA. The request for such concurrence shall be made to the regional office of GSA for the region in which the property is located.

Sec. 101-47.502-2 Disposal costs.

Any public body receiving improvements on land or related personal property pursuant to this subpart shall pay the disposal costs incident to the donation, such as dismantling, removal, and the cleaning up of the premises.

Sec. 101-47.503 Abandonment and destruction.**Sec. 101-47.503-1 General.**

(a) No improvements on land or related personal property shall be abandoned or destroyed by a Federal agency unless a duly authorized official of that agency finds, in writing, that donation of such property in accordance with the provisions of this subpart is not feasible. This

finding shall be in addition to the finding prescribed in Sec. 101-47.501-4. If at any time prior to actual abandonment or destruction the donation of the property pursuant to this subpart becomes feasible, such donation will be accomplished.

(b) No abandonment or destruction shall be made in a manner which is detrimental or dangerous to public health or safety or which will cause infringement of the rights of other persons.

(c) The concurrence of GSA shall be obtained prior to the abandonment or destruction of improvements on land or related personal property (1) which had an original cost (estimated if not known) of more than \$50,000, or (2) which are of permanent type construction, or (3) where their retention would enhance the value of the underlying land, if it were to be made available for sale or lease.

Sec. 101-47.503-2 Notice of proposed abandonment or destruction.

Except as provided in Sec. 101-47.503-3, improvements on land or related personal property shall not be abandoned or destroyed by a Federal agency until after public notice of such proposed abandonment or destruction. Such notice shall be given in the area in which the property is located, shall contain a general description of the property to be abandoned or destroyed, and shall include an offering of the property for sale. A copy of such notice shall be given to the regional office of GSA for the region in which the property is located.

Sec. 101-47.503-3 Abandonment or destruction without notice.

If (a) the property had an original cost (estimated if not known) of not more than \$1,000; or (b) its value is so low or the cost of its care and handling so great that its retention in order to post public notice is clearly not economical; or (c) immediate abandonment or destruction is required by considerations of health, safety, or security; or (d) the assigned mission of the agency might be jeopardized by the delay, and a finding with respect to paragraph (a), (b), (c), or (d) of this section, is made in writing by a duly authorized official of the Federal agency and approved by a reviewing authority, abandonment or destruction may be made without public notice. Such a finding shall be in addition to the findings prescribed in Secs. 101-47.501-4 and 101-47.503-1(a).

Subpart 101-47.6--Delegations**Sec. 101-47.600 Scope of subpart.**

This subpart sets forth the special delegations of authority granted by the Administrator of General Services to other agencies for the utilization and disposal of certain real property pursuant to the Act.

Sec. 101-47.601 Delegation to Department of Defense.

(a) Authority is delegated to the Secretary of Defense to determine that excess real property and related personal property under the control of the Department of Defense having a total estimated fair market value, including all the component units of the property, of less than \$15,000 as determined by the Department of Defense, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of said property by means deemed advantageous to the United States.

(b) Prior to such determination and disposal, the Secretary of Defense shall take steps as may be appropriate to determine that the property is not required for the needs of any Federal agency.

(c) The authority conferred in this Sec. 101-47.601 shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under Subpart 101-47.2 shall not be required.

(d) The authority delegated in this Sec. 101-47.601 may be redelegated to any officer or employee of the Department of Defense.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966; 56 FR 56935, Nov. 7, 1991]

Sec. 101-47.602 Delegation to the Department of Agriculture.

(a) Authority is delegated to the Secretary of Agriculture to determine that excess real property and related personal property under the control of the Department of Agriculture having a total estimated fair market value, including all the component units of the property, of less than \$15,000 as determined by the Department of Agriculture, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of said property by means deemed advantageous to the United States.

(b) Prior to such determination and disposal, the Secretary of Agriculture shall take steps as may be appropriate to determine that the property is not required for the needs of any Federal agency.

(c) The authority conferred in this Sec. 101-47.602 shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under Subpart 101-47.2 shall not be required.

(d) The authority delegated in this Sec. 101-47.602 may be redelegated to any officer or employee of the Department of Agriculture.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966; 56 FR 56936, Nov. 7, 1991]

Sec. 101-47.603 Delegations to the Secretary of the Interior.

(a) Authority is delegated to the Secretary of the Interior to maintain custody and control of an accountability for those mineral resources which may be designated from time to time by the Administrator or his designee and which underlie Federal property currently utilized or excess or surplus to the Government's needs. Authority is also delegated to the Secretary to dispose of such mineral resources by lease and to administer any leases which are made.

(1) The Secretary may redelegate this authority to any officer, official, or employee of the Department of the Interior.

(2) Under this authority, the Secretary of the Interior, as head of the holding agency is responsible for the following: (i) Maintaining proper inventory records, and (ii) monitoring the minerals as necessary to ensure that no unauthorized mining or removal of the minerals occurs.

(3) Under this authority, the Secretary of the Interior, as head of the disposal agency, is responsible for the following: (i) Securing, in accordance with Sec. 101-47.303-4, any appraisals deemed necessary by the Secretary; (ii) coordinating with all surface landowners, Federal or otherwise, so as not to unduly interfere with the surface use; (iii) ensuring that the lands which may be disturbed or damaged are restored after removal of the mineral deposits is completed; and (iv) notifying the Administrator when the disposal of all marketable mineral deposits has been completed.

(4) The Secretary of the Interior, as head of the disposal agency, is responsible for complying with the applicable environmental laws and regulations, including (i) the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.) and the implementing regulations issued by the Council on Environmental Quality (40 CFR Part 1500); (ii) Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f); and (iii) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.) and the Department of Commerce implementing regulations (15 CFR Parts 923 and 930).

(5) The Secretary of the Interior will forward promptly to the Administrator copies of any agreements executed under this authority.

(6) The Secretary of the Interior will provide to the Administrator an annual accounting of the proceeds received from leases executed under this authority.

(b) Authority is delegated to the Secretary of the Interior to determine that excess real property and related personal property under his control having a total estimated fair market value, including all components of the property, of less than \$15,000 as determined by the Secretary, is not required for the needs and responsibilities of Federal

agencies; and thereafter to dispose of the property by means most advantageous to the United States.

(1) Prior to such determination and disposal, the Secretary of the Interior shall determine that the property is not required for the needs of any Federal agency.

(2) The authority conferred in this Sec. 101-47.603 (b) shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under Subpart 101-47.2 shall not be required.

(3) The authority delegated in this Sec. 101-47.603(b) may be redelegated to any officer or employee of the Department of the Interior.

[48 FR 50893, Nov. 4, 1983, as amended at 56 FR 56936, Nov. 7, 1991]

Sec. 101-47.604 Delegation to the Department of the Interior, the Department of Health and Human Services, and the Department of Education.

(a) The Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education, are delegated authority to transfer and to retransfer to each other, upon request, any of the property of either agency which is being used and will continue to be used in the administration of any functions relating to the Indians. The term "property," as used in this Sec. 101-47.604, includes real property and such personal property as the Secretary making the transfer or retransfer determines to be related personal property.

(b) This authority shall be exercised only in connection with property which the Secretary transferring or retransferring such property determines:

(1) Comprises a functional unit;

(2) Is located within the United States; and

(3) Has an acquisition cost of \$100,000 or less: Provided, however, That the transfer or retransfer shall not include property situated in any area which is recognized as an urban area or place for the purpose of the most recent decennial census.

(c) No screening of the property as required by the regulations in this Part 101-47 need be conducted, it having been determined that such screening among Federal agencies would accomplish no useful purpose since the property which is subject to transfer or retransfer hereunder will continue to be used in the administration of any functions relating to the Indians.

(d) Any such transfer or retransfer of a specific property shall be without reimbursement except:

(1) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or

(2) Whenever reimbursement at fair value is required by Subpart 101-47.2.

(e) Where funds were not programmed and appropriated for acquisition of the property, the Secretary requesting the transfer or retransfer shall so certify. Any determination necessary to carry out the authority contained in this Sec. 101-47.604 which otherwise would be required under this part to be made by GSA shall be made by the Secretary transferring or retransferring the property.

(f) The authority conferred in this Sec. 101-47.604 shall be exercised in accordance with such other provisions of the regulations of GSA issued pursuant to the Act as may be applicable.

(g) The Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education, are authorized to redelegate any of the authority contained in this Sec. 101-47.604 to any officers or employees of their respective departments.

[29 FR 16126, Dec. 3, 1964, as amended at 56 FR 56936, Nov. 7, 1991]

Subpart 101-47.7--Conditional Gifts of Real Property To Further the Defense Effort

Sec. 101-47.700 Scope of subpart.

This subpart provides for acceptance or rejection on behalf of the United States of any gift of real property offered on condition that it be used for a particular defense purpose and for subsequent disposition of such property (Act of July 27, 1954, (50 U.S.C. 1151-1156)).

[40 FR 12079, Mar. 17, 1975]

Sec. 101-47.701 Offers and acceptance of conditional gifts.

(a) Any agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of the Act of July 27, 1954, shall notify the appropriate regional office of GSA and shall submit a recommendation as to acceptance or rejection of the gift.

(b) Prior to such notification, the receiving agency shall acknowledge receipt of the offer and advise the donor of its referral to the GSA regional office, but should not indicate acceptance or rejection of the gift on behalf of the United States. A copy of the acknowledgment shall accompany the notification and recommendation to the regional office.

(c) When the gift is determined to be acceptable and it can be accepted and used in the form in which offered, it will be transferred without reimbursement to an agency designated by GSA for use for the particular purpose for which it was donated.

(d) If the gift is one which GSA determines may and should be converted to money, the funds, after conversion, will be deposited with the Treasury Department for transfer to an appropriate account which will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

Sec. 101-47.702 Consultation with agencies.

Such conditional gifts of real property will be accepted or rejected on behalf of the United States or transferred to an agency by GSA, only after consultation with the interested agencies.

Sec. 101-47.703 Advice of disposition.

GSA will advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

Sec. 101-47.704 Acceptance of gifts under other laws.

Nothing in this Subpart 101-47.7 shall be construed as applicable to the acceptance of gifts under the provisions of other laws.

Subpart 101-47.8--Identification of Unneeded Federal Real Property

Sec. 101-47.800 Scope of subpart.

This subpart is designed to implement, in part, section 2 of Executive Order 12512, which provides, in part, that the Administrator of General Services shall provide Governmentwide policy, oversight and guidance for Federal real property management. The Administrator of General Services shall issue standards, procedures, and guidelines for the conduct of surveys of real property holdings of Executive agencies on a continuing basis to identify properties which are not utilized, are underutilized, or are not being put to their optimum use; and make reports describing any property or portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator, is not utilized, is underutilized, or is not being put to optimum use, and which he recommends should be reported as excess property. The provisions of this subpart are presently limited to fee-owned properties and supporting leaseholds and lesser interests located within the States of

the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. The scope of this subpart may be enlarged at a later date to include real property in additional geographical areas and other interests in real property.

[51 FR 193, Jan. 3, 1986]

Sec. 101-47.801 Standards.

Each executive agency shall use the following standards in identifying unneeded Federal property.

(a) Definitions--(1) Not utilized. "Not utilized" means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable executive agency, or occupied in caretaker status only.

(2) Underutilized. "Underutilized" means an entire property or portion thereof, with or without improvements:

(i) Which is used only at irregular periods or intermittently by the accountable executive agency for current program purposes of that agency; or

(ii) Which is used for current program purposes that can be satisfied with only a portion of the property.

(3) Not being put to optimum use. "Not being put to optimum use" means an entire property or portion thereof, with or without improvements, which:

(i) Even though utilized for current program purposes of the accountable executive agency is of such nature or value, or is in such a location that it could be utilized for a different significantly higher and better purpose; or

(ii) The costs of occupying are substantially higher than would be applicable for other suitable properties that could be made available to the accountable executive agency through transfer, purchase, or lease with total net savings to the Government after consideration of property values as well as costs of moving, occupancy, efficiency of operations, environmental effects, regional planning, and employee morale.

(b) Guidelines. The following general guidelines shall be considered by each executive agency in its annual review (see Sec. 101-47.802):

(1) Is the property being put to its highest and best use?

(i) Consider such aspects as surrounding neighborhood, zoning, and other environmental factors;

(ii) Is present use compatible with State, regional, or local development plans and programs?

(iii) Consider whether Federal use of the property would be justified if rental charge equivalent to commercial rates were added to the program costs for the function it is serving.

(2) Are operating and maintenance costs excessive compared with those of other similar facilities?

(3) Will contemplated program changes alter property requirements?

(4) Is all of the property essential for program requirements?

(5) Will local zoning provide sufficient protection for necessary buffer zones if a portion of the property is released?

(6) Are buffer zones kept to a minimum?

(7) Is the present property inadequate for approved future programs?

(8) Can net savings to the Nation be realized through relocation considering property prices or rentals, costs of moving, occupancy, and increase in efficiency of operations?

(9) Have developments on adjoining nonfederally owned land or public access or road rights-of-way granted across the Government-owned land rendered the property or any portion thereof unsuitable or unnecessary for program requirements?

(10) If Federal employees are housed in Government-owned residential property, is the local market willing to acquire Government-owned housing or can it provide the necessary housing and other related services that will permit the Government-owned housing area to

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be released? (Provide statistical data on cost and availability of housing on the local market.)

(11) Can the land be disposed of and program requirements satisfied through reserving rights and interests to the Government in the property if it is released?

(12) Is a portion of any property being retained primarily because the present boundaries are marked by the existence of fences, hedges, roads, and utility systems?

(13) Is any land being retained merely because it is considered undesirable property due to topographical features or to encumbrances for rights-of-way or because it is believed to be not disposable?

(14) Is land being retained merely because it is landlocked?

(15) Is there land or space in Government-owned buildings that can be made available for utilization by others within or outside Government on a temporary basis?

[35 FR 5261, Mar. 28, 1970, as amended at 37 FR 5030, Mar. 9, 1972; 40 FR 12079, Mar. 17, 1975]

Sec. 101-47.802 Procedures.

(a) Executive agency annual review. Each executive agency shall make an annual review of its property holdings.

(1) In making such annual reviews, each executive agency shall use the standards set forth in Sec. 101-47.801 in identifying property that is not utilized, is underutilized, or is not being put to its optimum use.

(2) A written record of the review of each individual facility shall be prepared. The written review record shall contain comments relative to each of the above guidelines and an overall map of the facility showing property boundaries, major land uses, improvements, safety zones, proposed uses, and regulations or other authorizations that sanction the requirement for and usage made of or proposed for individual parcels of the property. A copy of the review record shall be made available to GSA upon request or to the GSA survey representative at the time of the survey of each individual facility.

(3) Each executive agency shall, as a result of its annual review, determine, in its opinion, whether any portion of its property is not utilized, is underutilized, or is not being put to optimum use. With regard to each property, the following actions shall be taken:

(i) When the property or a portion thereof is determined to be not utilized, the executive agency shall:

(A) Initiate action to release the property; or

(B) Hold for a foreseeable future program use upon determination by the head of the executive agency. Such determination shall be fully and completely documented and the determination and documentation kept available for GSA review (see Sec. 101-47.802(b)(3)(ii)(B)). If property of this type which is being held for future use can be made available for temporary use by others, the executive agency shall notify the appropriate regional office of GSA before any permit or license for use is issued to another Federal agency or before any out-lease is granted by the executive agency. GSA will advise the executive agency whether the property should be permitted to another Federal agency for temporary use and will advise the executive agency the name of the Federal agency to whom the permit shall be granted.

(ii) When the property is determined to be underutilized, the executive agency shall:

(A) Limit the existing program to a reduced area and initiate action to release the remainder; or

(B) Shift present use imposed on the property to another property so that release action may be initiated for the property under review.

(iii) When, based on an indepth study and evaluation, it is determined that the property is not being put to its optimum use, the executive agency shall relocate the current program whenever a suitable alternate site, necessary funding, and legislative authority are available to accomplish that purpose. When the site, funding, or legislative authority are not available, a special report shall be made to

the appropriate regional office of GSA for its consideration in obtaining possible assistance in accomplishing relocation.

(b) GSA Survey. Pursuant to section 2 of Executive Order 12512, GSA will conduct, on a continuing basis, surveys of real property holdings of all Executive agencies to identify properties which, in the judgment of the Administrator of General Services, are not utilized, are underutilized, or are not being put to their optimum use.

(1) GSA surveys of the real property holdings of executive agencies will be conducted by officials of the GSA Central Office and/or regional offices of GSA for the property within the geographical area of each region.

(i) The head of the field office of the agency having accountability for the facility will be notified in advance of a scheduled GSA survey and furnished at that time with copies of these regulations.

(ii) The head of that field office shall arrange for an appropriate official of the executive agency having necessary authority, and who is sufficiently knowledgeable concerning the property and current and future program uses of the property, to be available to assist the GSA representative in his survey.

(2) [Reserved]

(3) To facilitate the GSA survey, executive agencies shall:

(i) Cooperate fully with GSA in its conduct of the surveys; and

(ii) Make available to the GSA survey representative records and information pertinent to the description and to the current and proposed use of the property such as:

(A) Brief description of facilities (number of acres, buildings, and supporting facilities);

(B) The most recent utilization report or analysis made of the property including the written record of the annual review made by the agency, pursuant to Sec. 101-47.802(a), together with any supporting documents;

(C) Detail maps which show property boundaries, major land uses, improvements, safety zones, proposed uses, and regulations or other authorizations that sanction the usage made or proposed for individual parcels or the entire property; drawings; and layout plans.

(4) Upon receipt of notification of the pending GSA survey, the executive agency shall initiate action immediately to provide the GSA representative with an escort into classified or sensitive areas or to inform that representative of steps that must be taken to obtain necessary special security clearances or both.

(5) Upon completion of the field work for the survey:

(i) The GSA representative will so inform the executive agency designated pursuant to 101-47.802(b)(1). To avoid any possibility of misunderstanding or premature publicity, conclusions and recommendations will not be discussed with this official. However, survey teams should discuss the facts they have obtained with local officials at the end of the survey to ensure that all information necessary to conduct a complete survey is obtained. The GSA representative will evaluate and incorporate the results of the field work into a survey report and forward the survey report to the GSA Central Office.

(ii) The GSA Central Office will notify the head of the Executive agency or his designee, in writing, of the survey findings and/or recommendations. A copy of the survey report will be enclosed when a recommendation is made that some or all of the real property should be reported excess, and the comments of the Executive agency will be requested thereon. The Executive agency will be afforded 45 calendar days from the date of the notice in which to submit such comments. If the case is resolved, GSA Central Office will notify the head of the Executive agency or his designee, in writing, of the resolution, and the case will be completed at such time as the agency completes all resolved excess and/or disposal actions. The agency will be afforded a period of 90 calendar days from the date of the notice to complete such actions.

(iii)-(iv) [Reserved]

(v) If the case is not resolved, the GSA Central Office will request assistance of the Executive Office of the President to obtain resolution.

[35 FR 5261, Mar. 28, 1970, as amended at 36 FR 7215, Apr. 16, 1971; 37 FR 5030, Mar. 9, 1972; 42 FR 40698, Aug. 11, 1977; 48 FR 25200, June 6, 1983; 51 FR 194, Jan. 3, 1986]

Subpart 101-47.9 Use of Federal Real Property to Assist the Homeless

SOURCE: 56 FR 23794, May 24, 1991, unless otherwise noted.

Sec. 101-47.901 Definitions.

Applicant means any representative of the homeless which has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day including weekends and holidays.

Eligible organization means a State, unit of local government or a private non-profit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property means any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 483.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

ICH means the Interagency Council on the Homeless.

Landholding agency means a Federal department or agency with statutory authority to control real property.

Lease means an agreement between either the Department of Health and Human Services for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with

generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2).)

Regional Homeless Coordinator means a regional coordinator of the Interagency Council on the Homeless.

Representative of the Homeless means a State or local government agency, or private nonprofit organization which provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

State Homeless Coordinator means a state contact person designated by a state to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with section 210(a) of the Stewart B. McKinney Act of 1987, as amended.

Suitable property means that HUD has determined that a particular property satisfies the criteria listed in Sec. 101-47.906.

Surplus property means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in Sec. 101-47.906.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

Sec. 101-47.902 Applicability.

(a) This part applies to Federal real property which has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of title V of the McKinney Act (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized).

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a Court Order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this Part.

Sec. 101-47.903 Collecting the information.

(a) Canvass of landholding agencies. On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus, in surveys conducted by the agencies under section 202 of the Federal Property and Administrative Services Act (40 U.S.C. 483), Executive Order 12512, and 41 CFR part 101-47.800. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) Agency Annual Report. By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD, and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) GSA Inventory. HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) Change in Status. If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency shall submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the Federal Register. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

Sec. 101-47.904 Suitability determination.

(a) Suitability determination. Within 30 days after the receipt of information from landholding agencies regarding properties which were reported pursuant to the canvass described in Sec. 101-47.903(a), HUD will determine, under criteria set forth in Sec. 101-47.906, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) Scope of suitability. HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) Environmental information. HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in Sec. 101-47.906.

(d) Written record of suitability determination. HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of Sec. 101-47.907(a).

(e) Property determined unsuitable. Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the Federal Register of a Notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) Procedures for appealing unsuitability determinations.

(1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the Federal Register that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1-800-927-7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the Federal Register.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in section 101-47.901.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to Sec. 101-47.907(a), upon receipt of which HUD will promptly publish the determination in the Federal Register. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

Sec. 101-47.905 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA which has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to Sec. 101-47.905(g) and will advise HUD of the availability of the property for use by the homeless as provided in Sec. 101-47.905(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in Sec. 101-47.905(c) through Sec. 101-47.905(g).

(c) If a landholding agency reports a property to GSA which has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45

days a response which includes the following for each identified property:

- (1) A statement that there is no other compelling Federal need for the property, and therefore, the property will be determined surplus; or
- (2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.
- (f) When an excess property is determined suitable and available and notice is published in the Federal Register, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.
- (g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible nonprofit organizations to determine interest in the property in accordance with current regulations. (See 41 CFR 101-47.203-5, 101-47.204-1 and 101-47.303-2.)
- (h) The landholding agency will retain custody and accountability and will protect and maintain any property which is reported excess to GSA as provided in 41 CFR 101-47.402.

Sec. 101-47.906 Suitability criteria.

(a) All properties, buildings and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

- (1) National security concerns. A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.
- (2) Property containing flammable or explosive materials. A property located within 2000 feet of an industrial, commercial or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers which provide the heating or power source for the property, and which meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations and tank trucks are not included in this category and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.
- (3) Runway clear zone and military airfield clear zone. A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.
- (4) Floodway. A property located in the floodway of a 100 year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.
- (5) Documented deficiencies. A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage or extensive deterioration, friable asbestos, PCB's, or natural hazardous substances such as radon, periodic flooding, sinkholes or earth slides.
- (6) Inaccessible. A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

Sec. 101-47.907 Determination of availability.

(a) Within 45 days after receipt of a letter from HUD pursuant to 101-47.904(a), each landholding agency must transmit to HUD a statement of one of the following:

- (1) In the case of unutilized or underutilized property:
 - (i) An intention to declare the property excess,
 - (ii) An intention to make the property available for use to assist the homeless, or
 - (iii) the reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in section 101-47.906.
- (2) In the case of excess property which had previously been reported to GSA:
 - (i) A statement that there is no compelling Federal need for the property, and that, therefore, the property will be determined surplus; or
 - (ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

Sec. 101-47.908 Public notice of determination.

(a) No later than 15 days after the last 45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the Federal Register a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

- (1) Properties that are suitable and available.
- (2) Properties that are suitable and unavailable.
- (3) Properties that are suitable and to be declared excess.
- (4) Properties that are unsuitable.
- (b) Information about specific properties can be obtained by contacting HUD at the following toll free number, 1-800-927-7588.
- (c) HUD will transmit to the ICH a copy of the list of all properties published in the Federal Register. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.
- (d) No later than February 15 of each year, HUD shall publish in the Federal Register a list of all properties reported pursuant to Sec. 101-47.903(b).
- (e) HUD shall publish an annual list of properties determined suitable but which agencies reported unavailable including the reasons such properties are not available.
- (f) Copies of the lists published in the Federal Register will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

Sec. 101-47.909 Application process.

(OMB approval number 09370191)

- (a) Holding period.
 - (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the Federal Register.
 - (2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60 day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

41 CFR Part 101-47: Federal Property Management Regulations

(3) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address:

Director, Division of Health Facilities Planning, Public Health Service, Room 17A-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60 day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

- (i) No application or written expression of interest has been made under any law for use of the property for any purpose; and
- (ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) Application Requirements. Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following----

(1) Description of the applicant organization. The applicant must document that it satisfies the definition of a "representative of the homeless," as specified in section 101-47.901 of this subpart. The applicant must document its authority to hold real property. Private non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) Description of the property desired. The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions except for local zoning regulations.

(3) Description of the proposed program. The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) Ability to finance and operate the proposed program. The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) Compliance with non-discrimination requirements. Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or handicap in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) Insurance. The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR 12.9.

(7) Historic preservation. Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) Environmental information. The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) Local government notification. The applicant must indicate that it has informed the applicable unit of general local government responsible for providing sewer, water, police, and fire services, in writing of its proposed program.

(10) Zoning and Local Use Restrictions. The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant which applies for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to section 101-47.909(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) Scope of evaluations. Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) Deadline. Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) Evaluations.

(1) Upon receipt of an application, HHS will review it for completeness, and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations which have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraph (e)(2)(iv) and (e)(2)(v) of this section are of equal importance.

(i) Services offered. The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) Need. The demand for the program and the degree to which the available property will be fully utilized.

(iii) Implementation Time. The amount of time necessary for the proposed program to become operational.

(iv) Experience. Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) Financial Ability. The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application HHS will evaluate all

completed applications simultaneously. HHS will rank approved applications based on the elements listed in section 101-47.908(e)(2), and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

Sec. 101-47.910 Action on approved applications.

(a) Unutilized and underutilized properties.

(1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property via a lease or permit;

(iii) The terms and conditions of the lease or permit document.

(b) Excess and surplus properties.

(1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with 41 CFR 101-47.402, custody and accountability of the property will remain throughout the lease term with the agency which initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under subsection 203(k)(1) of that law.

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) Deeds. Surplus property may be conveyed to representatives of the homeless pursuant to section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1), and section 501(f) of the McKinney Act as amended, 42 U.S.C. 11411.

Representatives of the homeless must complete the application packet pursuant to the requirements of section 101-47.909 of this part and in accordance with the requirements of 45 CFR part 12.

(c) Completion of Lease Term and Reversion of Title. Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

Sec. 101-47.912 No applications approved.

(a) At the end of the 60 day holding period described in Sec. 101-47.909(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or

the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

Subparts 101-47.10--101-47.48 [Reserved]

Subpart 101-47.49--Illustrations

Sec. 101-47.4900 Scope of subpart.

This subpart sets forth certain forms and illustrations referred to previously in this part. Agency field offices should obtain the GSA forms prescribed in this subpart by submitting their future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (BRA), Washington, DC 20405. Standard forms should be obtained from the nearest GSA supply distribution facility.

[40 FR 12080, Mar. 17, 1975]

Sec. 101-47.4901 [Reserved]

Sec. 101-47.4902 Standard Form 118, Report of Excess Real Property.

Sec. 101-47.4902-1 Standard Form 118a, Buildings, Structures, Utilities, and Miscellaneous Facilities.

Sec. 101-47.4902-2 Standard Form 118b, Land.

Sec. 101-47.4902-3 Standard Form 118c, Related Personal Property.

Sec. 101-47.4902-4 Instructions for the preparation of Standard Form 118, and Attachments, Standard Forms 118a, 118b, and 118c.

[33 FR 12003, Aug. 23, 1968, as amended at 36 FR 9022, May 18, 1971]

Sec. 101-47.4904 GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

Note: The illustrations in Sec. 101-47.4904 are filed as part of the original document and do not appear in the Federal Register or the Code of Federal Regulations.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.4904-1 Instructions for preparation of GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

Note: The illustrations in Sec. 101-47.4904-1 are filed as part of the original document and do not appear in the Federal Register or the Code of Federal Regulations.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.

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Statute: 16 U.S.C. 667b-d. Disposals for wildlife conservation purposes.

Type of property*: Any surplus real property (with or without improvements) that can be utilized for wildlife conservation purposes other than migratory birds, exclusive of (1) oil, gas, and mineral rights, and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: The agency of the State exercising the administration of the wildlife resources of the State.

Statute: 23 U.S.C. 107 and 317. Disposals for Federal aid and other highways.

Type of property*: Any real property or interests therein determined by the Secretary of Transportation to be reasonably necessary for the right-of-way of a Federal aid or other highway (including control of access thereto from adjoining lands) or as a source of material for the construction or maintenance of any such highway adjacent to such real property or interest therein, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State wherein the property is situated (or such political subdivision of the State as its law may provide), including the District of Columbia and Commonwealth of Puerto Rico.

Statute: 40 U.S.C. 122. Transfer to the District of Columbia of jurisdiction over properties within the District for administration and maintenance under conditions to be agreed upon.

Type of property: Any surplus real property, except property for which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: District of Columbia.

Statute: 40 U.S.C. 345c. Disposals for authorized widening of public highways, streets, or alleys.

Type of property*: Such interest in surplus real property as the head of the disposal agency determines will not be adverse to the interests of the United States, exclusive of (1) oil, gas and mineral rights; (2) property subject to disposal for Federal aid and other highways under the provisions of 3 U.S.C. 107 and 317; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State or political subdivision of a State.

Statute: 40 U.S.C. 484(e)(3)(H). Disposals by negotiations.

Type of property: Any surplus real property including related personal property.

Eligible public agency: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported agency in any of them.

Statute: 40 U.S.C. 484(k)(1)(A). Disposals for school, classroom, or other educational purposes.

Type of property*: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported educational institution in any of them.

Statute: 40 U.S.C. 484(k)(1)(B). Disposals for public health purposes including research.

Type of property*: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported medical institution in any of them.

Statute: 40 U.S.C. 484(k)(2). Disposals for public park or recreation areas.

Type of property*: Any surplus real property recommended by the Secretary of the Interior as being needed for use as a public park or recreation area, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(k)(3). Disposals for historic monuments.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Interior must determine that the property is suitable and desirable for use as a historic monument for the benefit of the public. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments established by section 3 of the act entitled "An Act for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved Aug. 21, 1935 (49 Stat. 666), and only so much of any such property shall be so determined to be suitable or desirable for such use as is necessary for the preservation and property observation of its historic features. The Administrator of General Services may authorize the use of the property conveyed under this subsection for revenue-producing activities if the Secretary of the Interior (1) determines that such activities are compatible with use of the property for historic monument purposes, (2) approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property, (3) approves grantee's plan for financing repairs, rehabilitation, restoration, and maintenance of the property which must provide that incomes in excess of the costs of such items shall be used by the grantee only for public historic preservation, park, or recreational purposes, and (4) approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(p). Disposals for correctional facilities.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or

for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Attorney General must determine that the property is required for correctional facility use and approve an appropriate program or project for the care or rehabilitation of criminal offenders.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(q). Disposals for port facility purposes.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of Transportation must determine, after consultation with the Secretary of Labor, that the property is located in an area of serious economic disruption; and approve, after consultation with the Secretary of Commerce, an economic development plan associated with the plan of use of the property.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 49 U.S.C. 47151. Disposals for public airport purposes.

Type of property*: Any surplus real or personal property, exclusive of (1) oil, gas and mineral rights; (2) military chapels subject to disposal as a shrine, memorial or for religious purposes under the provisions of Sec. 101-47.308-5; (3) property subject to disposal as a historic monument site under the provisions of Sec. 101-47.308-3; (4) property the highest and the best use of which is determined by the disposal agency to be industrial and which shall be so classified for disposal, and (5) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State, the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 50 U.S.C. App. 1622(d). Disposals of power transmission lines needful for or adaptable to the requirements of a public power project.

Type of property*: Any surplus power transmission line and the right-of-way acquired for its construction.

Eligible public agency: Any State or political subdivision thereof or any State agency or instrumentality.

*The Commissioner, Public Buildings Service, General Services Administration, Washington, DC 20405, in appropriate instances, may waive any exclusions listed in this description, except for those required by law.

[FMPR Amdt. H-192, 60 FR 35708, July 11, 1995]

Sec. 101-47.4906 Sample notice to public agencies of surplus determination.

Notice of Surplus Determination--Government Property

(Date)

(Name of property)

(Location)

Notice is hereby given that the above described property has been determined to be surplus Government property. The property consists of ____ acres of fee land, more or less, together with easements and improvements as follows:

This property is surplus property available for disposal under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), as amended, certain related laws, and applicable regulations. The applicable regulations provide that non-Federal public agencies shall be allowed a reasonable period of time to submit a formal application for surplus real property in which they may be interested. Disposal of this property, or portions thereof, may be made to public agencies for the public uses listed below whenever the Government determines that the property is available for such uses and that disposal thereof is authorized by the statutes cited and applicable regulations. (Note: List only those statutes and types of disposal appropriate to the particular surplus property described in the notice.)

16 U.S.C. 667b-d	Wildlife conservation.
23 U.S.C. 107 and 317	Federal aid and certain other highways.
40 U.S.C. 122	Transfer to the District of Columbia.
40 U.S.C. 345c	Widening of highways, streets, or alleys.
40 U.S.C. 484(e)(3)(H)	Negotiated sales for general public purpose uses.

(Note: This statute should not be listed if the affected surplus property has an estimated value of less than \$10,000.)

40 U.S.C. 484(k)(1)(A)	School, classroom, or other educational purposes.
40 U.S.C. 484(k)(1)(B)	Protection of public health, including research.
40 U.S.C. 484(k)(2)	Public park or recreation area.
40 U.S.C. 484(k)(3)	Historic monument.
40 U.S.C. 484(p)	Correctional facility.
40 U.S.C. 484(q)	Port facility.
49 U.S.C. 47151	Public airport.
50 U.S.C. App. 1622(d)	Power transmission lines.

If any public agency desires to acquire the property under any of the cited statutes, notice thereof must be filed in writing with (Insert name and address of disposal agency):

Such notice must be filed not later than-----
(Insert date of the 21st day following the date of the notice.)

Each notice so filed shall:

- Disclose the contemplated use of the property;
- Contain a citation of the applicable statute or statutes under which the public agency desires to procure the property;
- Disclose the nature of the interest if an interest less than fee title to the property is contemplated;
- State the length of time required to develop and submit a formal application for the property. (Where a payment to the Government is required under the statute, include a statement as to whether funds are available and, if not, the period required to obtain funds.); and
- Give the reason for the time required to develop and submit a formal application.

Upon receipt of such written notices, the public agency shall be promptly informed concerning the period of time that will be allowed

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for submission of a formal application. In the absence of such written notice, or in the event a public use proposal is not approved, the regulations issued pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 provide for offering the property for sale.

Application forms or instructions to acquire property for the public uses listed in this notice may be obtained by contacting the following Federal agencies for each of the indicated purposes:

(Note: For each public purpose statute listed in this notice, show the name, address, and telephone number of the Federal agency to be contacted by interested public body applicants.)

[FMPR Amdt. H-192, 60 FR 35710, July 11, 1995]

Sec. 101-47.4906a Attachment to notice sent to zoning authority.

Federal Property and Administrative Services Act of 1949, As
Amended
Title VIII--Urban Land Utilization

DISPOSAL OF URBAN LANDS

Sec. 803

(a) Whenever the Administrator contemplates the disposal for or on behalf of any Federal agency of any real property situated within an urban area, he shall, prior to offering such land for sale, give reasonable notice to the head of the governing body of the unit of general local government having jurisdiction over zoning and land-use regulation in the geographical area within which the land or lands are located in order to afford the government the opportunity of zoning for the use of such land in accordance with local comprehensive planning.

(b) The Administrator, to the greatest practicable extent, shall furnish to all prospective purchasers of such real property, full and complete information concerning:

(1) Current zoning regulations and prospective zoning requirements and objectives for such property when it is unzoned: and

(2) Current availability to such property of streets, sidewalks, sewers, water, street lights, and other service facilities and prospective availability of such services if such property is included in comprehensive planning.

[34 FR 11210, July 3, 1969]

Sec. 101-47.4906b Paragraph to be added to letter sent to zoning authority.

As the head of the governing body of the unit of general local government having jurisdiction over zoning and land-use regulations in the geographical area within which this surplus property is located, you also may be interested in section 803 of the Federal Property and Administrative Services Act of 1949, as amended, 82 Stat. 1105, a copy of which is attached for ready reference. It is requested that the information contemplated by section 803(b) be forwarded this office within the same 20-calendar-day period prescribed in the attached notice of surplus determination for the advising of a desire to acquire the property. If the property is unzoned and you desire the opportunity to accomplish such zoning in accordance with local comprehensive planning pursuant to section 803(a), please so advise us in writing within the same time frame and let us know the time you will require for the promulgation of such zoning regulations. We will not delay sale of the property pending such zoning for more than 50 days from the date of this notice. However, if you will not be able to accomplish the desired zoning before the property is placed on sale, we will advise prospective purchasers of the pending zoning in process.

[34 FR 11210, July 3, 1969]

Sec. 101-47.4906-1 Sample letter for transmission of notice of surplus determination.

----- (Date)

Certified Mail--Return Receipt Requested

(Addressee)

Dear -----:

The former ----- (Name of property),

----- (Location) has been determined to be surplus Government property and available for disposal.

Included in the attached notice are a description of the property and procedural instructions to be followed if any public agency desires to submit an application for the property. Please note particularly the name and address given for filing written notice if any public agency desires to submit such an application, the time limitation within which written notice must be filed, and the required content of such notice. Additional instructions are provided for the submission of comments regarding any incompatibility of the disposal with any public agency's development plans and programs.

In order to ensure that all interested parties are informed of the availability of this property, please post the additional copies of the attached notice in appropriate conspicuous places./1/

NOTE /1/ Attach as many copies of the notice as may be anticipated will be required for adequate posting.

A notice of surplus determination also is being mailed to -----
----- (Other addressees).

Sincerely,

Attachment

[34 FR 11211, July 3, 1969, as amended at 35 FR 8487, June 2, 1970]

Sec. 101-47.4906-2 Sample letter to a state single point of contact.

(Date)

(Addressee)

Dear:-----

On July 14, 1982, the President issued Executive Order 12372, "Intergovernmental Review of Federal Programs." This Executive order provides for State and local government coordination and review of certain proposed Federal programs and activities, including real property disposal actions of the General Services Administration.

Enclosed is a notice of surplus determination that has been sent to appropriate public bodies advising them of the availability of the described real property for public purposes. Surplus Federal real property which is not acquired for State or local governmental public purposes is generally offered for sale to the general public by competitive bidding procedures.

No final disposal action will be taken for 60 calendar days from the date of this letter to allow for the receipt of any comments from your office.

[52 FR 9831, Mar. 27, 1987]

Sec. 101-47.4907 List of Federal real property holding agencies.

Note: The illustrations in Sec. 101-47.4907 are filed as part of the original document and do not appear in the Federal Register or the Code of Federal Regulations.

[40 FR 12080, Mar. 17, 1975]

Sec. 101-47.4908 Excess profits covenant.

Excess Profits Covenant for Negotiated Sales to Public Bodies

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

(1) The purchase price of the real property;
(2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;

(3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section; and

(4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

(1) A description of each portion of the property that has been resold;
(2) The sale price of each such resold portion;
(3) The identity of each purchaser;
(4) The proposed land use; and
(5) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

If no resale has been made, the report shall so state.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

[51 FR 23760, July 1, 1986]

Sec. 101-47.4909 Highest and best use.

(a) Highest and best use is the most likely use to which a property can be put, so as to produce the highest monetary return from the

property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g. zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

(b) An analysis and determination of highest and best use is based on information compiled from the property inspection and environmental assessment. Major considerations include:

(1) Present zoning category (check one or more as appropriate).

Industrial	----
Single family residential	----
Multiple family residential	----
Commercial/retail	----
Warehouse	----
Agriculture	----
Institutional or public use	----

Other (specify)-----

Not zoned	----
Zoning proceeding pending Federal disposal	----

Category proposed-----

(2) Physical characteristics. (Describe land and improvements and comment on property's physical characteristics including utility services, access, environmental and historical aspects, and other significant factors) -----

(3) Area/neighborhood uses (check one or more as appropriate).

Single family residential	----
Multiple family residential	----
Industrial	----
Office	----
Retail or commercial	----
Farmland	----
Recreational/park area	----

Other (specify)-----

(4) Existing neighboring improvements (check one or more as appropriate).

Deteriorating	----
Stable	----
Some recent development	----
Significant recent development	----

Vicinity improvements:

----Dense ----Moderate ----Sparse ----None

(5) Environmental factors/constraints adversely affecting the marketability of the property (check one or more as appropriate).

Severe slope or soil instability	----
Road access	----
Access to sanitary sewers or storm sewers	----
Access to water supply	----
Location within or near floodplain	----
Wetlands	----
Tidelands	----
Irregular shape	----
Present lease agreement or other possessory non-Federal interest	----

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Historic, archeological or cultural ----
Contamination or other hazards ----
Other (specify)-----

Comments on adverse conditions-----

(6) Former Government uses (check one or more as appropriate).

Office ----
Industrial ----
Warehouse or storage ----
Residential ----
Retail/commercial ----
Agricultural ----

Specify other uses below, such as airport, health, education, recreation
and special military facilities--

(c) Determination of highest and best use (check one or more as
appropriate).

Single family residential ----
Multiple family residential ----
Industrial ----
Office ----
Retail or commercial ----
Agricultural ----
Warehouse/storage ----
Transportation ----
Historic monument ----
Recreation/park ----
Health ----
Education or related institutional use ----
Airport ----
Wildlife Conservation ----
Public utility ----

Other (include general public or governmental).

Remarks:-----

(d) Are significant costs required to make property conform to
highest and best use (i.e. demolition of existing improvements,
relocation of existing improvements, etc.)?

Remarks:-----

(e) Can a knowledgeable cost estimate be given in reference to
paragraph d above? (Enter figure).

Yes (\$) ----
No ----

(f) Is the property located adjacent to or inside the boundaries of a
State park, forest or recreational area?

Yes ----
No ----

Remarks-----

[49 FR 37091, Sept. 21, 1984]

Sec. 101-47.4910 Field offices of Department of Health, Education, and Welfare.

Note: The illustrations in Sec. 101-47.4910 are filed as part of the
original document and do not appear in the Federal Register or the
Code of Federal Regulations.

[40 FR 12080, Mar. 17, 1975]

Sec. 101-47.4911 Outline for explanatory statements for negotiated sales.

Note: The illustration listed in Sec. 101-47.4911 is filed as part of
the original document and does not appear in the Federal Register or
the Code of Federal Regulations.

[42 FR 31455, June 21, 1977, as amended at 54 FR 32445, Aug. 8,
1989]

Sec. 101-47.4912 Regional offices of the Bureau of Outdoor Recreation, Department of the Interior.

Address communications to: Regional Director, Bureau of Outdoor
Recreation, Department of the Interior.

Region and jurisdiction	Address and telephone
Northeast region:	
Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York	Federal Bldg., 600 Arch St., Philadelphia, Pa. 19106. Code 215, , 597-7989
Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and District of Columbia	
Southeast region:	
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands	148 Cain St., Atlanta, Ga 30303. Code 404, 526-4405.
Lake Central region:	
Illinois, Indiana, Michigan, Minnesota, Ohio, and, Wisconsin	3853 Research Park Dr, Ann Arbor Mich. 48104. Code 313, 769- 3211
Midcontinent region:	
Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming	Building 41, Denver Federal Center, P.O. Box 25387, Denver, Colo. 80225. Code 303, 234-2634
South Central region:	
Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	Patio Plaza Bldg., 5000 Marble Ave., NE., Albuquerque, N. Mex. 87110. Code 505, 843-3514
Northwest region:	
Alaska, Idaho, Oregon, and Washington	United Pacific Bldg., 1000 Second Ave., Seattle, Wash. 98104. Code 206, 442-4706
Pacific Southwest region:	
American Samoa, Arizona, California, Guam, Hawaii, and Nevada	Box 36062, 450 Golden Gate Ave., San, Francisco, Calif. 94102. Code 415, 556-0182

[40 FR 22260, May 22, 1975]

Sec. 101-47.4913 Outline for protection and maintenance of excess and surplus real property.

A. General. In protecting and maintaining excess and surplus properties, the adoption of the principle of "calculated risk" is considered to be essential. In taking what is termed a "calculated risk," the expected losses and deteriorations in terms of realizable values are anticipated to be less in the overall than expenditures to minimize the risks. In determining the amount of protection to be supplied under this procedure, a number of factors should be considered; such as, the availability of, and the distance to, local, public, or private protection facilities; the size and value of the facility; general characteristics of structures; physical protection involving fencing, number of gates, etc.; the location and availability of communication facilities; and the amount and type of activity at the facility. Conditions at the various excess and surplus properties are so diverse that it is impracticable to establish a definite or fixed formula for determining the extent of protection and maintenance that should be applied. The standards or criteria set forth in B and C, below, are furnished as a guide in making such determinations.

B. Protection Standards. The following standards are furnished as a guide in determining the amount and limits of protection.

1. Properties not Requiring Protection Personnel. Fire protection or security personnel are not needed at:

- (a) Facilities where there are no structures or related personal property;
- (b) Facilities where the realizable or recoverable value of the improvements and related personal property subject to loss is less than the estimated cost of protection for a one-year period;
- (c) Facilities of little value located within public fire and police department limits, which can be locked or boarded up;
- (d) Facilities where the major buildings are equipped with automatic sprinklers, supervised by American District Telegraph Company or other central station service, which do not contain large quantities of readily removable personal property, and which are in an area patrolled regularly by local police; and
- (e) Facilities where agreements can be made with a lessee of a portion of the property to protect the remaining portions at nominal, or without additional cost.

2. Properties Requiring a Resident Custodian. A resident custodian or guard only is required at facilities of the following classes:

- (a) Facilities containing little removable personal property but having a considerable number of buildings to be sold for off-site use when (a) the buildings are of low realizable value and so spaced that loss of more than a few buildings in a single fire is improbable, or (b) the buildings are so located that water for firefighting purposes is available and municipal or other fire department services will respond promptly;
- (b) Small, inactive industrial and commercial facilities which must be kept open for inspection and which are so located that public fire and police protection can be secured by telephone;
- (c) Facilities where the highest and best use has been determined to be salvage; and
- (d) Facilities of little, or salvage, value but potentially dangerous and attractive to children and curiosity seekers where the posting of signs is not sufficient to protect the public.

3. Properties Requiring Continuous Guard Service. One guard on duty at all times (a total of 5 guards required) is required at facilities of high market value which are fenced; require only one open gate which can be locked during patrols; all buildings of which can be locked; and where local police and fire protection can be secured by telephone.

4. Properties Requiring High Degree of Protection. More than one firefighter-guard will be required to be on duty at all times at facilities of the classes listed below. The number, and the assignment, of firefighter- guards in such cases should be determined by taking into consideration all pertinent factors.

(a) Facilities of high market value which are distant from public assistance and require an on-the-site firefighting force adequate to hold fires in check until outside assistance can be obtained.

(b) Facilities of high market value which can obtain no outside assistance and require an on-the-site firefighting force adequate to extinguish fires.

(c) Facilities of high market value at which the patrolling of large areas is necessary.

(d) Facilities of high market value not fenced and containing large quantities of personal property of a nature inviting pilferage.

(e) Facilities of high market value at which several gates must be kept open for operating purposes.

5. Standards for All Protected Properties.

(a) All facilities within the range of municipal or other public protection, but outside the geographic limits of such public body, should be covered by advance arrangements with appropriate authorities for police and fire protection service, at a monthly or other service fee if necessary.

(b) Patrolling of all facilities with large areas to be protected should be accomplished by use of automotive vehicles.

(c) At fenced facilities, a minimum number of gates should be kept open.

6. Firefighter-Guards. Firefighters and guards are the normal means for carrying out the fire protection and security programs at excess and surplus real properties where both such programs are required. The duties of firefighters and guards should be combined to the maximum extent possible in the interest of both economy and efficiency. Such personnel would also be available in many cases for other miscellaneous services, such as, removing grass and weeds or other fire hazards, servicing fire extinguishers, and other activities related to general protection of property.

7. Operating Requirements of Protection Units. Firefighter-guards or guards, should be required to make periodic rounds of facilities requiring protection. The frequency of these rounds would be based upon a number of factors; such as, location and size of the facility, type of structures and physical barriers, and the amount and type of activity at the facility. There may be instances where some form of central station supervision, such as American District Telegraph Company, will effect reduction in costs by reducing the number of firefighter-guards, or guards, required to adequately protect the premises.

8. Watchman's Clock. To insure adequate coverage of the entire property by the guards, or firefighter-guards, an approved watchman's clock should be provided, with key stations strategically located so that, in passing from one to the other, the guards will cover all portions of the property.

9. Protection Alarm Equipment. Automatic fire detection devices and allied equipment and services may materially assist in minimizing protection costs. However, use of devices of this type, like guards, are purely secondary fire protection and are primarily a means of obtaining fire and police protection facilities at the property in an emergency. There are various types of devices, each of which can be considered separately or in combination as supplementing guard patrols, which may assist in reduction of costs and, in some instances, it may be possible to eliminate all guards.

10. Sentry Dogs. Frequently there are facilities of high market value, or which cover large areas, or are so isolated that they invite intrusion by curiosity seekers, hunters, vagrants, etc., which require extra or special protection measures. This has usually been taken care of by staffing with additional guards so that the "buddy system" of patrolling may be used. In such cases, the use of sentry dogs should be considered in arriving at the appropriate method of offsetting the need for additional guards, as well as possible reductions in personnel. If it is determined to be in the Government's interest to use this type of protection, advice should be obtained as to acquisition (lease, purchase, or donation), training, use, and care, from the nearest police department using sentry dogs. When sentry dogs are used, the property

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should be clearly posted "Warning--This Government Property Patrolled by Sentry Dogs."

C. Maintenance Standards. The following standards or criteria are furnished as a guide in connection with the upkeep of excess and surplus real properties:

1. Temporary Type Buildings and Structures. Temporary buildings housing personal property which cannot be readily removed to permanent type storage should be maintained only to the extent necessary to protect the personal property. Vacant temporary structures should not be maintained except in unusual circumstances.

2. Permanent Type Buildings and Structures. (a) No interior painting should be done. Where exterior wood or metal surfaces require treatment to prevent serious deterioration, spot painting only should be done when practicable.

(b) Carpentry and glazing should be limited to: work necessary to close openings against weather and pilferage; making necessary repairs to floors, roofs, and sidewalls as a protection against further damage; shoring and bracing of structures to preclude structural failures; and similar operations.

(c) Any necessary roofing and sheet metal repairs should, as a rule, be on a patch basis.

(d) Masonry repairs, including brick, tile, and concrete construction, should be undertaken only to prevent leakage or disintegration, or to protect against imminent structural failure.

(e) No buildings should be heated for maintenance purposes except in unusual circumstances.

3. Mechanical and Electrical Installations. These include plumbing, heating, ventilating, air conditioning, sprinkler systems, fire alarm systems, electrical equipment, elevators, and similar items.

(a) At facilities in inactive status, maintenance of mechanical and electrical installations should be limited to that which is necessary to prevent or arrest serious deterioration. In most cases, personnel should not be employed for this work except on a temporary basis at periodic intervals when it is determined by inspections that the work is necessary. Wherever possible electrical systems should be deenergized, water drained from all fixtures, heat turned off, and buildings secured against unauthorized entry. Sprinkler systems should be drained during freezing weather and reactivated when danger of freezing has passed.

(b) At facilities in active status, such as multiple-tenancy operations, equipment should be kept in reasonable operating condition. Operation of equipment to furnish services to private tenants, as well as the procurement of utility services for distribution to tenants, should be carried on only to the extent necessary to comply with lease or permit conditions, or in cases where it is impracticable for tenants to obtain such services directly from utility companies or other sources.

(c) At facilities where elevators and/or high-pressure boilers and related equipment are in operation, arrangements should be made for periodic inspections by qualified and licensed inspectors to insure that injury to personnel, loss of life, or damage to property does not occur.

(d) Individual heaters should be used, when practicable, in lieu of operating heating plants.

4. Grounds, Roads, Railroads, and Fencing. (a) Maintenance of grounds should be confined largely to removal of vegetation where necessary to avoid fire hazards and to control poisonous and noxious plant growth in accordance with local and State laws and regulations; plowing of fire lanes where needed; and removal of snow from roads and other areas only to the extent necessary to provide access for maintenance, fire protection, and similar activities. Wherever practicable, hay crops should be sold to the highest bidders with the

purchaser performing all labor in connection with cutting and removal. Also, agricultural and/or grazing leases may be resorted to, if practicable, as other means of reducing the cost of grounds maintenance. Any such leases shall be subject to the provisions of Sec. 101-47.203-9 or Sec. 101-47.312.

(b) Only that portion of the road network necessary for firetruck and other minimum traffic should be maintained. The degree to which such roads are to be maintained should be only that necessary to permit safe passage at a reasonable speed.

(c) Railroads should not be maintained except as might be required for protection and maintenance operations, or as required under the provisions of a lease or permit.

(d) Ditches and other drainage facilities should be kept sufficiently clear to permit surface water to run off.

(e) Fencing, or other physical barrier, should be kept in repair sufficiently to afford protection against unauthorized entry.

5. Utilities. (a) At inactive properties, water systems, sewage disposal systems, electrical distribution systems, etc., should be maintained only to the extent necessary to provide the minimum services required. Buildings or areas not requiring electrical service or water should be deenergized electrically and the water valved off. Utilities not in use, or which are serving dismantled or abandoned structures, should not be maintained.

(b) At active properties, water supply, electrical power, and sewage disposal facilities frequently must be operated at rates much below designed capacities. Engineering studies should determine the structural and operating changes necessary for maximum economy. Where leakage is found in water distribution lines, such lines may be valved off rather than repaired, unless necessary for fire protection or other purposes.

(c) Where utilities are purchased by contract, such contracts should be reviewed to determine if costs can be reduced by revision of the contracts.

6. Properties to be Disposed of as Salvage. No funds should be expended for maintenance on properties where the highest and best use has been determined to be salvage.

D. Repairs. Repairs should be limited to those additions or changes that are necessary for the preservation and maintenance of the property to deter or prevent excessive, rapid, or dangerous deterioration or obsolescence and to restore property damaged by storm, flood, fire, accident, or earthquake only where it has been determined that restoration is required.

E. Improvements. No costs should be incurred to increase the sales value of a property, and no costs should be incurred to make a property disposable without the prior approval of GSA. (See Sec. 101-47.401-5.)

[29 FR 16126, Dec. 3, 1964, as amended at 30 FR 11281, Aug. 2, 1965]

Sec. 101-47.4914 Executive Order 12512.

Note: The illustrations in Sec. 101-47.4914 are filed as part of the original document and do not appear in this volume
[50 FR 194, Jan. 3, 1986]

45 CFR Part 12:

Department of Health and Human Services

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR PUBLIC HEALTH PURPOSES

Sec.

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Exhibit A—Public Benefit Allowance for Transfer of Real Property for Health Purposes

AUTHORITY: Sec. 203, 63 Stat. 385, as amended; 40 U.S.C. 484; sec. 501 of Pub. L. 100-77, 101 Stat. 509-10, 42 U.S.C. 11411.

SOURCE: 45 FR 72173, Oct. 31, 1980, unless otherwise noted.

Sec. 12.1 Definitions.

(a) “Act” means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377 (40 U.S.C. 471 et seq.). Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) “Accredited” means having the approval of a recognized accreditation board or association on a regional, State, or national level, such as a State Board of Health. “Approval” as used above describes the formal process carried out by State Agencies and institutions in determining that health organizations or programs meet minimum acceptance standards.

(c) “Administrator” means the Administrator of General Services.

(d) “Assigned property” means real and related personal property which, in the discretion of the Administrator or his designee, has been made available to the Department for transfer for public health purposes.

(e) “Department” means the U.S. Department of Health and Human Services.

(f) “Disposal agency” means the executive agency of the Government which has authority to assign property to the Department for transfer for public health purposes.

(g) “Excess” means any property under the control of any Federal agency which is not required for its needs and the discharge of its

responsibilities, as determined by the head thereof.

(h) “Fair market value” means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) “Holding agency” means the Federal agency which has control over and accountability for the property involved.

(j) “Nonprofit institution” means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) “Off-site property” means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for public health purposes.

(l) “On-site” means surplus real property, including related personal property, to be transferred by the Department for use in place for public health purposes.

(m) “Public benefit allowance” means a discount on the sale or lease price of real property transferred for public health purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) “Related personal property” means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) “Secretary” means the Secretary of Health and Human Services.

(p) “State” means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) “Surplus” when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

[45 FR 72173, Oct. 31, 1980, as amended at 53 FR 7745, Mar. 10, 1988]

Sec. 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for public health purposes, as provided for in section 203(k) of the Act.

Sec. 12.3 General Policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for public health purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and

nonprofit public health institutions which (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for public health purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for public health purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in Sec. 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with Sec. 12.9.

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm; clinical services; services (including shelter) to homeless individuals; other public health services (including water and sewer); or similar services devoted primarily to the promotion and protection of public health. In addition, organizations which provide assistance to homeless individuals may be eligible for leases under title V of Public Law 100-77. Except for the provision of services (including shelter) to homeless individuals, organizations which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The eligible organization must be authorized to carry out the activity for which it requests the property.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handicap, or national origin in the use of the property.

[45 FR 72173, Oct. 31, 1980, as amended at 53 FR 7745, Mar. 10, 1988; 55 FR 32252, Aug. 8, 1990]

Sec. 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on an "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the General Services Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

Sec. 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

Sec. 12.6 Notice of available property.

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for public health uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible public health purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

Sec. 12.7 Applications for surplus real property.

Applications for surplus real property for public health purposes shall be made to the Department through the office specified in the notice of availability.

[55 FR 32252, Aug. 8, 1990]

Sec. 12.8 Assignment of surplus real property.

(a) Notice of interest in a specific property for public health purposes will be furnished the General Services Administrator by the Department at the earliest possible date.

(b) Requests to the Administrator for assignment of surplus real property to the Department for transfer for public health purposes will be based on the following conditions:

(1) The Department has an acceptable application for the property.

(2) The applicant is willing, authorized, and in a position to assume immediate care, custody, and maintenance of the property.

(3) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer.

(4) The applicant has the necessary funds, or the ability to obtain such funds, to carry out the approved program of use of the property.

Sec. 12.9 General disposal terms and conditions.

(a) Surplus real property transfers under this part will be limited to public health purposes. Transferees shall be entitled to a public benefit allowance in terms of a percentage which will be applied against the value of the property to be conveyed. Such an allowance will be computed on the basis of benefits to the United States from the use of such property for public health purposes. The computation of such public benefit allowances will be in accordance with Exhibit A attached hereto and made a part hereof.

(b) A transfer of surplus real property for public health purposes is subject to the disapproval of the Administrator within 30 days after notice is given to him of the proposed transfer.

(c) Transfers will be on the following terms and conditions:

(1) The transferee will be obligated to utilize the property continuously in accordance with an approved plan of operation.

(2) The transferee will not be permitted to sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of the property, or any part thereof, without the prior written authorization of the Department.

(3) The transferee will file with the Department such reports covering the utilization of the property as may be required.

(4) In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in the approved plan without the consent of the Department, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by the Department, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of the Department. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (c)(6) of this section, or the right of the Department to impose conditions to its consent.

(5) Lessees will be required to carry all perils and liability insurance to protect the Government and the Government's residual interest in the property. Transferees will be required to carry such flood insurance as may be required by the Department pursuant to Pub. L. 93-234. Where the transferee elects to carry insurance against damages to or loss of on-site property due to fire or other hazards, and where loss or damage to transferred Federal surplus real property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition, or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed in the case of leases, attributable to the fair market value of the leased facilities.

(6) With respect to on-site property, in the event of noncompliance with any of the conditions of the transfer as determined by the Department, title to the property transferred and the right to immediate possession shall, at the option of the Department, revert to the Government. In the event title is reverted to the United States for noncompliance or voluntarily reconveyed, the transferee shall, at the option of the Department, be required to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the transferee to adapt the property to the public health use for which the property was transferred. With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by the Department, the right of occupancy and possession shall, at the option of the Department, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required at the option of the Department to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the lessee to adapt the property to the public health use for which the property was leased.

With respect to any reverter of title or termination of leasehold resulting from noncompliance, the Government shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering title to or possession of the property.

Any payments of cash made by the transferee against the purchase price of property transferred shall, upon a forfeiture of title to the property for breach of condition, be forfeited.

(7) With respect to off-site property, in the event of noncompliance with any of the terms and conditions of the transfer, the unearned public benefit allowance shall, at the option of the Department, become immediately due and payable or, if the property or any portion thereof is sold, leased, or otherwise disposed of without authorization from the Department, such sale, lease or sublease, or other disposal shall be for the benefit and account of the United States and the United States shall be entitled to the proceeds. In the event the transferee fails to remove the property or any portion thereof within the time specified, then in addition to the rights reserved above, at the option of the Department, all right, title, and interest in and to such unremoved property shall be retransferred to other eligible applicants or shall be forfeited to the United States.

(8) With respect only to on-site property which has been declared excess by the Department of Defense, such declaration having included a statement indicating the property has a known potential for use during a national emergency, the Department shall reserve the right during any period of emergency declared by the President of the United States or by the Congress of the United States to the full and unrestricted use by the Government of the surplus real property, or of any portion thereof, disposed of in accordance with the provisions of this part. Such use may be either exclusive or nonexclusive. Prior to the expiration or termination of the period of restricted use by the

transferee, the Government will not be obligated to pay rent or any other fees or charges during the period of emergency, except that the Government will:

(i) Bear the entire cost of maintenance of such portion of the property used by it exclusively or over which it may have exclusive possession or control;

(ii) Pay the fair share, commensurate with the use of the cost of maintenance of such surplus real property as it may use nonexclusively or over which it may have nonexclusive possession or control;

(iii) Pay a fair rental for the use of improvements or additions to the surplus real property made by the purchaser or lessee without Government aid; and

(iv) Be responsible for any damage to the surplus real property caused by its use, reasonable wear and tear, the common enemy and acts of God excepted. Subsequent to the expiration or termination of the period of restricted use, the obligations of the Government will be as set forth in the preceding sentence and, in addition, the Government shall be obligated to pay a fair rental for all or any portion of the conveyed premises which it uses.

(9) The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for thirty (30) years for land with or without improvements; and for facilities being acquired separately from land whether they are for use on-site or off-site, the period of limitations on the use of the structures will be equal to their estimated economic life. The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for the entire initial lease period and for any renewal periods for property leased from the Department.

(d) Transferees, by obtaining the consent of the Department, may abrogate the restrictions set forth in paragraph (c) of this section for all or any portion of the property upon payment in cash to the Department of an amount equal to the then current fair market value of the property to be released, multiplied by the public benefit allowance granted at the time of conveyance, divided by the total number of months of the period of restriction set forth in the conveyance document and multiplied by the number of months that remain in the period of restriction as determined by the Department. For purposes of abrogation payment computation, the current fair market value shall not include the value of any improvements placed on the property by the transferee.

(e) Related personal property will be transferred or leased as a part of the realty and in accordance with real property procedures. It will be subject to the same public benefit allowance granted for the real property. Where related personal property is involved in an on-site transfer, the related personal property may be transferred by a bill of sale imposing restrictions for a period not to exceed five years from the date of transfer, other terms and conditions to be the same as, and made a part of, the real property transaction.

Sec. 12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) The Department will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus real property for public health purposes, complete an environmental assessment of the proposed transaction in keeping with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No permit to use surplus real property shall allow the permittee to make, or cause to be made, any irreversible change in the condition of said property, and no use permit shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts.

(b) Applicants shall be required to provide such information as the Department deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard

questionnaire prescribed by the Public Health Service, as well as other relevant information, will be used by the Department in making said assessment.

(c) If the assessment reveals (1) That the proposed Federal action involves properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places, or (2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action, or (3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, the Department will, except as provided for in paragraph (d) below, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, the Department may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between the Department and another Federal agency, the Department will reserve the right to abrogate its lead agency agreement with the other Federal Agency.

[45 FR 72173, Oct. 31, 1980, as amended at 55 FR 32252, Aug. 8, 1990]

Sec. 12.11 Special terms and conditions.

(a) Applicants will be required to pay all external administrative costs which will include, but not be limited to, taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction and service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(b) In the case of off-site property, applicants will be required to post performance bonds, make performance guarantee deposits, or give such other assurances as may be required by the Department or the holding agency to insure adequate site clearance and to pay service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(c) Whenever negotiations are undertaken for disposal to private nonprofit public health organizations of any surplus real property which cost the Government \$1 million or more, the Department will give notice to the Attorney General of the United States of the proposed disposal and the terms and conditions thereof. The applicant shall furnish to the Department such information and documents as the Attorney General may determine to be appropriate or necessary to enable him to give the advice as provided for by section 207 of the Act.

(d) Where an applicant proposes to acquire or lease and use in place improvements located on land which the Government does not own, he shall be required, before the transfer is consummated, to obtain a right to use the land commensurate with the duration of the restrictions applicable to the improvements, or the term of the lease. The applicant will be required to assume, or obtain release of, the Government's obligations respecting the land including but not limited to obligations relating to restoration, waste, and rent. At the option of the Department, the applicant may be required to post a bond to indemnify the Government against such obligations.

(e) The Department may require the inclusion in the transfer or lease document of any other provision deemed desirable or necessary.

(f) Where an eligible applicant for an on-site transfer proposes to

construct new, or rehabilitate old, facilities, the financing of which must be accomplished through issuance of revenue bonds having terms inconsistent with the terms and conditions of transfer prescribed in Sec. 12.9 (c), (d), and (e) of this chapter, the Department may, in its discretion, impose such alternate terms and conditions of transfer in lieu thereof as may be appropriate to assure utilization of the property for public health purposes.

Sec. 12.12 Utilization.

(a) Where property or any portion thereof is not being used for the purposes for which transferred, the transferee will be required at the direction of the Department:

(1) To place the property into immediate use for an approved purpose;

(2) To retransfer such property to such other public health user as the Department may direct;

(3) To sell such property for the benefit and account of the United States;

(4) To return title to such property to the United States or to relinquish any leasehold interest therein;

(5) To abrogate the conditions and restrictions of the transfer, as set forth in Sec. 12.9(d) of this chapter, except that, where property has never been placed in use for the purposes for which transferred, abrogation will not be permitted except under extenuating circumstances; or

(6) To make payments as provided for in Sec. 12.3(c) of this chapter.

(b) Where the transferee or lessee desires to place the property in temporary use for a purpose other than that for which the property was transferred or leased, approval from the Department must be obtained, and will be conditioned upon such terms as the Department may impose.

Sec. 12.13 Form of conveyance.

(a) Transfers or leases of surplus real property will be on forms approved by the Office of General Counsel of the Department and will include such of the disposal or lease terms and conditions set forth in this part and such other terms and conditions as the Office of General Counsel may deem appropriate or necessary.

(b) Transfers of on-site property will normally be by quitclaim deed without warranty of title.

Sec. 12.14 Compliance inspections and reports.

The Department will make or have made such compliance inspections as are necessary and will require of the transferee or lessee such compliance reports and actions as are deemed necessary.

Sec. 12.15 Reports to Congress.

The Secretary will make such reports of real property disposal activities as are required by section 203 of the Act and such other reports as may be required by law.

34 CFR Part 12:

Department of Education

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES

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- 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

Appendix A to Part 12—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes

Authority : 40 U.S.C. 471-488; 20 U.S.C. 3401 et seq.; 42 U.S.C. 2000d (1) et seq.; 20 U.S.C. 1681 et seq.; 29 U.S.C. 794 et seq.; 42 U.S.C. 4332.

SOURCE: 57 FR 60394, Dec. 18, 1992, unless otherwise noted.

Sec. 12.1 What is the scope of this part?

This part is applicable to surplus Federal real property located within any State that is appropriate for assignment to, or that has been assigned to, the Secretary by the Administrator for transfer for educational purposes, as provided for in section 203(k) of the Federal

Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 et seq.).

(Authority: 40 U.S.C. 484(k))

Sec. 12.2 What definitions apply?

(a) Definitions in the Act. The following terms used in this part are defined in section 472 of the Act:

Administrator
Surplus property

(b) Definitions in the Education Department General Administrative Regulations (EDGAR). The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary
State

(c) Other Definitions: The following definitions also apply to this part:

Abrogation means the procedure the Secretary may use to release the transferee of surplus Federal real property from the covenants, conditions, reservations, and restrictions contained in the conveyance instrument before the term of the instrument expires.

Act means the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 et seq.).

Applicant means an eligible entity as described in Sec. 12.5 that formally applies to be a transferee or lessee of surplus Federal real property, using a public benefit allowance (PBA) under the Act.

Lessee, except as used in Sec. 12.14(a)(5), means an entity that is given temporary possession, but not title, to surplus Federal real property by the Secretary for educational purposes.

Nonprofit institution means any institution, organization, or association, whether incorporated or unincorporated—

(1) The net earnings of which do not inure or may not lawfully inure to the benefit of any private shareholder or individual; and

(2) That has been determined by the Internal Revenue Service to be tax-exempt under section 501(c)(3) of title 26.

Off-site property means surplus buildings and improvements—including any related personal property—that are capable of being removed from the underlying land and that are transferred by the Secretary without transferring the underlying real property.

On-site property means surplus Federal real property, including any related personal property—other than off-site property.

Period of restriction means that period during which the surplus Federal real property transferred for educational purposes must be used by the transferee or lessee in accordance with covenants, conditions, and any other restrictions contained in the conveyance instrument.

Program and plan of use means the educational activities to be conducted by the transferee or lessee using the surplus Federal real property, as described in the application for that property.

Public benefit allowance (“PBA”) means the credit, calculated in

accordance with Appendix A to this part, given to a transferee or lessee which is applied against the fair market value of the surplus Federal real property at the time of the transfer or lease of such property in exchange for the proposed educational use of the property by the transferee or lessee.

Related personal property means any personal property—

- (1) That is located on and is an integral part of, or incidental to the operation of, the surplus Federal real property; or
- (2) That is determined by the Administrator to be otherwise related to the surplus Federal real property.

Surplus Federal real property means the property assigned or suitable for assignment to the Secretary by the Administrator for disposal under the Act.

Transfer means to sell and convey title to surplus Federal real property for educational purposes as described in this part.

Transferee means that entity which has purchased and acquired title to the surplus Federal real property for educational purposes pursuant to section 203(k) of the Act.

(Authority: 40 U.S.C. 472 and 20 U.S.C. 3401 et seq.)

Sec. 12.3 What other regulations apply to this program?

The following regulations apply to this program:

- (a) 34 CFR Parts 100, 104, and 106.
- (b) 41 CFR Part 101-47.
- (c) 34 CFR Part 85.

(Authority: 40 U.S.C. 484(k); 42 U.S.C. 2000d-1 et seq.; 29 U.S.C. 794 et seq.; 20 U.S.C. 1681 et seq.; Executive Order 12549; and 20 U.S.C. 3474)

Subpart B—Distribution of Surplus Federal Real Property

Sec. 12.4 How does the Secretary provide notice of availability of surplus Federal real property?

The Secretary notifies potential applicants of the availability of surplus Federal real property for transfer for educational uses in accordance with 41 CFR 101-47.308-4.

(Authority: 40 U.S.C. 484(k)(1))

Sec. 12.5 Who may apply for surplus Federal real property?

The following entities may apply for surplus Federal real property:

- (a) A State.
- (b) A political subdivision or instrumentality of a State.
- (c) A tax-supported institution.
- (d) A nonprofit institution.
- (e) Any combination of these entities.

(Authority: 40 U.S.C. 484(k)(1)(A))

Sec. 12.6 What must an application for surplus Federal real property contain?

An application for surplus Federal real property must—

- (a) Contain a program and plan of use;
- (b) Contain a certification from the applicant that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations;
- (c) Demonstrate that the proposed program and plan of use of the surplus Federal real property is for a purpose that the applicant is authorized to carry out;
- (d) Demonstrate that the applicant is able, willing, and authorized to assume immediate custody, use, care, and maintenance of the surplus Federal real property;
- (e) Demonstrate that the applicant is able, willing, and authorized to pay the administrative expenses incident to the transfer or lease;

(f) Demonstrate that the applicant has the necessary funds, or the ability to obtain those funds immediately upon transfer or lease, to carry out the proposed program and plan of use for the surplus Federal real property;

(g) Demonstrate that the applicant has an immediate need and ability to use all of the surplus Federal real property for which it is applying;

(h) Demonstrate that the surplus Federal real property is needed for educational purposes at the time of application and that it is so needed for the duration of the period of restriction;

(i) Demonstrate that the surplus Federal real property is suitable or adaptable to the proposed program and plan of use; and

(j) Provide information requested by the Secretary in the notice of availability, including information of the effect of the proposed program and plan of use on the environment.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

Sec. 12.7 How is surplus Federal real property disposed of when there is more than one applicant?

(a) If there is more than one applicant for the same surplus Federal real property, the Secretary transfers or leases the property to the applicant whose proposed program and plan of use the Secretary determines provides the greatest public benefit, using the criteria contained in appendix A to this part that broadly address the weight given to each type of entity applying and its proposed program and plan of use. (See example in Sec. 12.10(d)).

(b) If, after applying the criteria described in paragraph (a) of this section, two or more applicants are rated equally, the Secretary transfers or leases the property to one of the applicants after—

(1) Determining the need for each applicant's proposed educational use at the site of the surplus Federal real property;

(2) Considering the quality of each applicant's proposed program and plan of use; and

(3) Considering each applicant's ability to carry out its proposed program and plan of use.

(c) If the Secretary determines that the surplus Federal real property is capable of serving more than one applicant, the Secretary may apportion it to fit the needs of as many applicants as is practicable.

(d)(1) The Secretary generally transfers surplus Federal real property to a selected applicant that meets the requirements of this part.

(2) Alternatively, the Secretary may lease surplus Federal real property to a selected applicant that meets the requirements of this part if the Secretary determines that a lease will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary.

(Authority: 40 U.S.C. 484(k))

Sec. 12.8 What transfer or lease instruments does the Secretary use?

(a) The Secretary transfers or leases surplus Federal real property using transfer or lease instruments that the Secretary prescribes.

(b) The transfer or lease instrument contains the applicable terms and conditions described in this part and any other terms and conditions the Secretary or Administrator determines are appropriate or necessary.

(Authority: 40 U.S.C. 484(c))

Sec. 12.9 What warranties does the Secretary give?

The Secretary transfers or leases surplus Federal real property on an "as is, where is," basis without warranty of any kind.

(Authority: 40 U.S.C. 484(k)(1))

Sec. 12.10 How is a Public Benefit Allowance (PBA) calculated?

(a) The Secretary calculates a PBA in accordance with the provisions of appendix A to this part taking into account the nature of the applicant, and the need for, impact of, and type of program and plan of use for the property, as described in that appendix.

(b) The following are illustrative examples of how a PBA would be calculated and applied under Appendix A:

(1) Entity A is a specialized school that has had a building destroyed by fire, and that has existing facilities determined by the Secretary to be between 26 and 50% inadequate. It is proposing to use the surplus Federal real property to add a new physical education program. Entity A would receive a basic PBA of 70%, a 10% hardship organization allowance, a 20% allowance for inadequacy of existing school plant facilities, and a 10% utilization allowance for introduction of new instructional programs. Entity A would have a total PBA of 110%. If Entity A is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA exceeds 100%.

(2) Entity B proposes to use the surplus Federal real property for nature walks. Because this qualifies as an outdoor educational program, Entity B would receive a basic PBA of 40%. If Entity B is awarded the surplus Federal real property, it would be required to pay 60% of the fair market value of the surplus Federal real property in cash at the time of the transfer.

(3) Entity C is an accredited university, has an ROTC unit, and proposes to use the surplus Federal real property for a school health clinic and for special education of the physically handicapped. Entity C would receive a basic PBA of 50% (as a college or university), a 20% accreditation organization allowance (accredited college or university), a 10% public service training organization allowance (ROTC), a 10% student health and welfare utilization allowance (school health clinic), and a 10% service to the handicapped utilization allowance (education of the physically handicapped). Entity C would have a total PBA of 100%. If Entity C is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA is 100%.

(4) Entities A, B, and C all submit applications for the same surplus Federal real property. Unless the Secretary decides to apportion it, the Secretary transfers or leases the surplus Federal real property to Entity A, since its proposed program and plan of use has the highest total PBA.

(Authority: 40 U.S.C. 484(k)(1)(c))

Subpart C—Conditions Applicable to Transfers or Leases

Sec. 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

- (a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.
- (b) National Historic Preservation Act of 1966, 16 U.S.C. 470.
- (c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq.
- (d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).
- (e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).
- (f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) et seq.
- (g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.
- (h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 et

seq.

- (i) Age Discrimination Act of 1975, 42 U.S.C. 1601 et seq.
- (j) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

Sec. 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) General terms and conditions for transfers and leases. The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in accordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with Sec. 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

- (i) Transfer taxes;
- (ii) Surveys;
- (iii) Appraisals;
- (iv) Inventory costs;
- (v) Legal fees;
- (vi) Title search;
- (vii) Certificate or abstract expenses;
- (viii) Decontamination costs;
- (ix) Moving costs;
- (x) Recordation expenses;
- (xi) Other closing costs; and
- (xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.

(6) The transferee or lessee shall file with the Secretary reports on its maintenance and use of the surplus Federal real property and any other reports required by the Secretary in accordance with the transfer or lease instrument.

(7) Any other term or condition that the Secretary determines appropriate or necessary.

(b) Additional terms and conditions for on-site transfers. The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period not to exceed thirty (30) years.

(c) Additional terms and conditions for off-site transfers. (1) The

terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period equivalent to the estimated economic life of the property conveyed for a transfer of off-site surplus Federal real property.

(2) In addition to the terms and conditions contained in paragraph (c) of this section, the Secretary may also require the transferee of off-site surplus Federal real property—

(i) To post performance bonds;

(ii) To post performance guarantee deposits; or

(iii) To give such other assurances as may be required by the Secretary or the holding agency to ensure adequate site clearance.

(d) Additional terms and conditions for leases. In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484(k)(1))

(Approved by the Office of Management and Budget under control number 1880-0524)

Sec. 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) By eligible entities. A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in Sec. 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;

(2) The Secretary's written consent is obtained by the transferee or lessee in advance; and

(3) The Secretary approves the use instrument in advance and in writing.

(b) By ineligible entities. A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in Sec. 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;

(2) The use is confined to a portion of the surplus Federal real property;

(3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and

(4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))

Subpart D—Enforcement

Sec. 12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

(a) General sanctions for noncompliance. The Secretary imposes any or all of the following sanctions, as applicable, to all transfers or leases of surplus Federal real property:

(1) If all or a portion of, or any interest in, the transferred or leased surplus Federal real property is not used or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of

the Secretary, the Secretary may require that—

(i) All revenues and the reasonable value of other benefits received by the transferee or lessee directly or indirectly from that use, as determined by the Secretary, be held in trust by the transferee or lessee for the United States subject to the direction and control of the Secretary;

(ii) Title or possession to the transferred or leased surplus Federal real property and the right to immediate possession revert to the United States;

(iii) The surplus Federal real property be transferred or leased to another eligible entity as the Secretary directs;

(iv) The transferee or lessee abrogate the conditions and restrictions in the transfer or lease instrument in accordance with the provisions of Sec. 12.15;

(v) The transferee or lessee place the surplus Federal real property into immediate use for an approved purpose and extend the period of restriction in the transfer or lease instrument for a term equivalent to the period during which the property was not fully and solely used for an approved use; or

(vi) The transferee or lessee comply with any combination of the sanctions described in paragraph (a)(1) or (a)(3) of this section.

(2) If title or possession reverts to the United States for noncompliance or is voluntarily reconveyed, the Secretary may require the transferee or lessee—

(i) To reimburse the United States for the decrease in value of the transferred or leased surplus Federal real property not due to—

(A) Reasonable wear and tear;

(B) Acts of God; or

(C) Reasonable alterations made by the transferee or lessee to adapt the surplus Federal real property to the approved program and plan of use for which it was transferred or leased;

(ii) To reimburse the United States for any costs incurred in reverting title or possession;

(iii) To forfeit any cash payments made by the transferee or lessee against the purchase or lease price of surplus Federal real property transferred;

(iv) To take any other action directed by the Secretary; or

(v) To comply with any combination of the provisions of paragraph (a)(3) of this section.

(3) If the transferee or lessee does not put the surplus Federal real property into use within the applicable time limitation in Sec. 12.12(a), the Secretary may require the transferee or lessee to make cash payments to the Secretary equivalent to the current fair market rental value of the surplus Federal real property for each month during which the program and plan of use has not been implemented.

(Authority: 40 U.S.C. 484(k)(4))

(4) If the Secretary determines that a lessee of a transferee or a sublessee of a lessee is not complying with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, the Secretary may require termination of the lease.

(Authority: 40 U.S.C. 484(k)(4)(A))

(b) Additional sanction for noncompliance with off-site transfer. In addition to the sanctions in paragraph (a) of this section, if the Secretary determines that a transferee is not complying with a term or condition of a transfer of off-site surplus Federal real property, the Secretary may require that the unearned PBA become immediately due and payable in cash to the United States.

(Authority: 40 U.S.C. 484(k)(4)(A))

Subpart E—Abrogation

Sec. 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

(a) The Secretary may, in the Secretary's sole discretion, abrogate the conditions and restrictions in the transfer or lease instrument if—

(1) The transferee or lessee submits to the Secretary a written request that the Secretary abrogate the conditions and restrictions in the conveyance instrument as to all or any portion of the surplus Federal real property;

(2) The Secretary determines that the proposed abrogation is in the best interests of the United States;

(3) The Secretary determines the terms and conditions under which the Secretary will consent to the proposed abrogation; and

(4) The Secretary transmits the abrogation to the Administrator and there is no disapproval by the Administrator within thirty (30) days after notice to the Administrator.

(b) The Secretary abrogates the conditions and restrictions in the transfer or lease instrument upon a cash payment to the Secretary based on the formula contained in the transfer or lease instrument and any other terms and conditions the Secretary deems appropriate to protect the interest of the United States.

(Authority: 40 U.S.C. 484(k)(4)(A)(iii))

Appendix A to Part 12.—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes /1/

Line No.	Line No.	Classification	Percent allowed public benefit allowance
1.	1.	Elementary or high schools	70
2.	2.	Colleges or Universities	50
3.	3.	Specialized schools	70
4.	4.	Public libraries or educational museums	/2/ 100
5.	5.	School outdoor education	40
6.	6.	Central administrative and/or service centers	80
7.	7.	Non-profit educational research organizations	50

[...Table continues...]

Organization allowances

Line No.	Accreditation	Federal impact	Public service training	Hardship	10-25%	26-50%	51-100%
1.		10	10	10	10	20	30
2.		20	10	10	10	20	30
3.			10	10	10	20	30
4.							
5.							
6.		20		10			
7.							

[...Table continues...]

Utilization allowances

Line No.	Introduction of new instructional programs	Student health and welfare	Research	Service to handicapped	Maximum public benefit allowance /4/
1.	10	10	10	10	100
2.	10	10	10	10	100
3.	10	10	10	10	100
4.					/2/ 100
5.	10	/3/ 10	10		70
6.					80
7.	10	10		10	100

[** This header applies to all remaining columns in this segment and extends to the next segment.]

/1/ This Appendix applies to transfers of both on-site and off-site surplus property.

/2/ Applicable when this is the primary use to be made of the property. The public benefit allowance for the overall program is applicable

when such facilities are conveyed as a minor component of other facilities.

/3/ This 10% may include an approvable recreation program which will be accessible to the public and entirely compatible with, but subordinate to, the educational program.

/4/ This column establishes the maximum discount from the fair market value for payment due from the transferee at the time of the transfer. This column does not apply for purposes of ranking applicants to determine to which applicant the property will be transferred. Competitive rankings are based on the absolute total of public benefit allowance points and are not limited to the 100% ceiling.

Description of Terms Used in This Appendix

“Elementary or High School” means an elementary school (including a kindergarten), high school, junior high school, junior-senior high school or elementary or secondary school system, that provides elementary or secondary education as determined under State law. However, it does not include a nursery school even though it may operate as part of a school system.

“College or University” means a non-profit or public university or college, including a junior college, that provides postsecondary education.

“Specialized School” means a vocational school, area trade school, school for the blind, or similar school.

“Public Library” means a public library or public library service system, not a school library or library operated by non-profit, private organizations or institutions that may be open to the general public. School libraries receive the public benefit allowance in the appropriate school classification.

“Educational Museum” means a museum that conducts courses on a continuing, not ad hoc, basis for students who receive credits from accredited postsecondary education institutions or school systems.

“School Outdoor Education” means a separate facility for outdoor education as distinguished from components of a basic school. Components of a school such as playgrounds and athletic fields receive the basic allowance applicable for that type of school. The outdoor education must be located reasonably near the school system and may be open to and used by the general public, but only if the educational program for which the property is conveyed is given priority of use. This category does not include components of the school such as playgrounds and athletic fields, that are utilized during the normal school year, and are available to all students.

“Central Administrative and/or Service Center” means administrative office space, equipment storage areas, and similar facilities.

Description of Allowances

“Basic Public Benefit Allowance” means an allowance that is earned by an applicant that satisfies the requirements of Sec. 12.10 of this part.

Organization Allowance

“Accreditation” means an allowance that is earned by any postsecondary educational institution, including a vocational or trade school, that is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602.

“Federal Impact” means an allowance that is earned by any local educational agency (LEA) qualifying for Federal financial assistance as the result of the impact of certain Federal activities upon a community, such as the following under Public Law 81-874 and Public Law 81-815: to any LEA charged by law with responsibility for education of

children who reside on, or whose parents are employed on, Federal property, or both; to any LEA to which the Federal Government has caused a substantial and continuing financial burden as the result of the acquisition of a certain amount of Federal property since 1938; or to any LEA that urgently needs minimum school facilities due to a substantial increase in school membership as the result of new or increased Federal activities.

“Public Services Training” means an allowance that is earned if the applicant has cadet or ROTC units or other personnel training contracts for the Federal or State governments. This is given to a school system only if the particular school receiving the property furnishes that training.

“Hardship” means an allowance earned by an applicant that has suffered a significant facility loss because of fire, storm, flood, other disaster, or condemnation. This allowance is also earned if unusual conditions exist such as isolation or economic factors that require special consideration.

“Inadequacies of Existing Facilities” means an allowance that is earned on a percentage basis depending on the degree of inadequacy considering both public and nonpublic facilities. Overall plant requirements are determined based on the relationship between the maximum enrollment accommodated in the present facilities, excluding double and night sessions and the anticipated enrollment if the facilities are transferred. Inadequacies may be computed for a component school unit such as a school farm, athletic field, facility for home economics, round-out school site, cafeteria, auditorium,

teacherages, faculty housing, etc., only if the component is required to meet State standards. In that event, the State Department of Education will be required to provide a certification of the need. Component school unit inadequacies may only be related to a particular school and not to the entire school system.

Utilization Allowances

“Introduction of New Instructional Programs” means an allowance that is earned if the proposed use of the property indicates that new programs will be added at a particular school. Examples of these new programs include those for vocational education, physical education, libraries, and similar programs.

“Student Health and Welfare” means an allowance that is earned if the proposed program and plan of use of the property provides for cafeteria, clinic, infirmary, bus loading shelters, or other uses providing for the well-being and health of students and eliminating safety and health hazards.

“Research” means an allowance that is earned if the proposed use of the property will be predominantly for research by faculty or graduate students under school auspices, or other primary educational research.

“Service to Handicapped” means an allowance that is earned if the proposed program and plan of use for the property will be for special education for the physically or mentally handicapped.

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PART 114-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

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Sec. 114-47.503-1 General.
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Sec. 114-47.603 Delegation to the Department of the Interior.
Sec. 114-47.800 Scope of subpart.
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Sec. 114-47.802-50 Disposal criteria.
Sec. 114-47.802-51 Funds and statutory authority.
Sec. 114-47.802-52 Bureau implementation.
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Sec. 114-47.802-54 Annual report to the Department.

Sec. 114-47.5101 Scope of subpart.
Sec. 114-47.5102 Applicability.
Sec. 114-47.5103 Definition of permit.
Sec. 114-47.5104 Authority.
Sec. 114-47.5105 Limitations.

Sec. 114-47.000 Scope of part.

The provisions of this part are applicable to all available, excess, and surplus real property and related personal property under the jurisdiction of Bureaus and Offices of the Department of the Interior in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

[40 FR 33217, Aug. 8, 1975]

Sec. 114-47.103 Definitions.

Sec. 114-47.103-50 Available real property.

Available real property is property which is no longer needed for the program activities of the Interior Bureau or Office having control thereof and which properly may be determined to be excess if no further need exists for such property within the Department of the Interior.

Sec. 114-47.103-51 Excess real property.

Excess real property is real property not required for the program activities of the Federal agency (see FPMR 101-43.104-7) having jurisdiction over the property. With respect to real property under the control of an Interior Bureau or Office, excess real property is that which is not required for the program activities of any Bureau or Office of the Department of the Interior, as determined by circularization (see IPMR 114-47.203).

Sec. 114-47.103-52 Surplus real property.

Surplus real property is any excess real property not required for the needs and responsibilities of any agency of the Federal Government.

Sec. 114-47.201 General provisions of subpart.

Sec. 114-47.201-1 Policy.

It is the policy of the Department of the Interior to:

(a) Survey all of its real property holdings at least once each year to determine that which is available for reassignment within the Department and that which is excess to its program needs.

(b) Achieve the maximum utilization by Interior Bureaus and Offices, in terms of economy and efficiency, of available real property in order to minimize expenditures for the purchase of real property.

(c) Provide for the reassignment of available real property among Interior Bureaus and Offices and facilitate the transfer of excess real property to other Federal agencies.

Sec. 114-47.201-2 Guidelines.

(a) Each Interior Bureau and Office having jurisdiction over real property shall:

(1) Survey all of its real property holdings at least once each year to determine which holdings, or portions thereof, are no longer needed in Interior programs or are uneconomically utilized. (See IPMR 114-47.8.)

(2) Promptly facilitate the transfer of real property which becomes available as a result of program completions, changes, curtailments, etc.

(3) Except as provided in IPMR 114-47.202-4 and 114-47.202-6, promptly report to the General Services Administration real property which has been determined to be excess to the Department's needs. (See IPMR 114-47.203-1.)

(4) Maintain its inventory of real property at the absolute minimum consistent with the economical and efficient conduct of assigned programs.

(b) Each Interior Bureau and Office shall, so far as is practicable and to the extent compatible with its program requirements, fulfill its needs for real property by utilization of available property offered by other Interior Bureaus and Offices and excess property held by other Federal agencies.

(c) Guidelines for notifying the General Services Administration of requirements for real property are set forth in IPMR 114-47.203-3.

[35 FR 295, Jan. 8, 1970, as amended at 36 FR 24004, Dec. 17, 1971]

Sec. 114-47.201-3 Lands withdrawn or reserved from the public domain.

(a) Withdrawn or reserved public domain lands, improved or unimproved, no longer needed by the holding Bureau or Office should be reported to the appropriate office of the Bureau of Land Management as provided in 43 CFR 2370.0-1 through 2374.2. If the Bureau of Land Management with the concurrence of the General Services Administration, determines that the property is not suitable for return to the public domain or disposable under the public land laws, then the circularization requirements of IPMR 114-47.203-1 and the reporting requirements of FPMR 101-47.202 will thereafter apply to such property.

(b) Improvements located on public domain land but being disposed of apart from such land are not reportable to the Bureau of Land Management.

[35 FR 295, Jan. 8, 1970, as amended at 38 FR 9081, Apr. 10, 1973]

Sec. 114-47.202 Reporting of excess real property.

Sec. 114-47.202-1 Reporting requirements.

(a) The authority to report such property as is no longer needed within the Department as excess to the General Services Administration has been delegated to the heads of Bureaus and Offices in 205 DM 10.

(b) Any request made by the Administrator of General Services for an office of this Department to institute specific surveys in accordance with this subsection must have the advance approval of the Assistant Secretary—Policy, Budget and Administration.

[35 FR 295, Jan. 8, 1970, as amended at 36 FR 17038, Aug. 27, 1971; 38 FR 9081, Apr. 10, 1973]

Sec. 114-47.202-4 Exceptions to reporting.

FPMR 101-47.603 delegates authority to the Secretary of the Interior to determine real property having an estimated fair market value of less than \$1,000 to be surplus to the needs of all Federal agencies and thereafter to dispose of such property. This authority has been redelegated to the heads of Bureaus and Offices in 205 DM 10. The delegation includes a provision excepting such property from the reporting requirements of FPMR 101-47.202-1. Therefore, excess real

property (including land, with or without improvements) having an estimated fair market value of less than \$1,000 is also excepted from reporting to the General Services Administration.

Sec. 114-47.202-6 Reports involving the public domain.

(a) The procedures set forth in this section (see also IPMR 114-47.201-3) shall be complied with before any withdrawn public domain land is declared to the General Services Administration as excess to Interior needs.

(b) Excess withdrawn public domain land, with or without improvements, having an estimated fair market value of less than \$1,000 is excepted from reporting to the General Services Administration as provided in IPMR 114-47.202-4. The provisions of this section must be complied with before any such land is determined by the holding Bureau or Office to be excess or surplus.

Sec. 114-47.202-10 Examination for acceptability.

Care must be taken to insure that complete and accurate excess reports, S.F. 118, are furnished the General Services Administration as the holding bureau must bear the expense of care and maintenance of the property for a period of 12 months plus the period to the first day of the succeeding quarter of the fiscal year after the date of receipt by GSA of an acceptable excess report.

Sec. 114-47.203 Utilization.

Sec. 114-47.203-1 Reassignment of real property by the agencies.

Available real property shall be screened against Department of the Interior needs in accordance with this Sec. 114-47.203 before it is determined to be excess. The authority to reassign or to transfer available real property and related personal property has been delegated to heads of Bureaus and Offices in 205 DM 10.

(a) Holding bureau utilization. Each Bureau and Office holding available real property (see definition in IPMR 114-47.103-50) shall insure that its own offices are afforded an opportunity to utilize such property either prior to or simultaneously with circularization of other Bureaus and Offices of the Department.

(b) Circularization of real property under \$1,000 in value. Routine written circularization of available real property having an estimated fair market value of less than \$1,000 should be avoided. Real property in this category shall be offered to those Interior and other Federal agency offices which the holding office believes might be interested in its acquisition, considering the nature and location of the property.

(c) Circularization of real property \$1,000 and over. Available real property having an estimated fair market value of \$1,000 or over shall be offered to bureaus and offices of the Department of the Interior as provided in IPMR Temporary Regulation No. 6 before it is determined to be excess: Provided, That where the head of the regional, area or State office responsible for the property determines that its nature or location virtually precludes further Departmental utilization, and such determination is made a part of the disposal record, then the property shall be subject to such circularization as he may direct. (See also IPMR 114-47.203-1(f).)

(d) Circularization of power transmission facilities. The approval of the appropriate program Assistant Secretary shall be obtained prior to circularization of any available power transmission line or related facility having an estimated fair market value of \$1,000 or more.

(1) In the case of planned disposal of facilities held by the Bonneville Power Administration, Alaska Power Administration, and the Southwestern Power Administration such approval shall be obtained from the Assistant Secretary—Energy and Minerals.

(2) In the case of planned disposal of facilities held by the Bureau of Reclamation, approval of the Assistant Secretary—Land and Water Resources shall be obtained.

(3) Requests for approval to initiate action to dispose of power transmission facilities shall be accompanied by a complete description

of the circumstances which the holding Bureau believes makes such disposal feasible. A copy of each request shall be furnished the Chief, Division of Property Management, Office of Administrative Management Policy.

(e) Reimbursement. Transfers of available real property within the Department of the Interior shall be made without exchange of funds, except:

(1) The disposing bureau may elect to receive reimbursement, to the extent that it would receive reimbursement under FPMR 101-47.203-7 if the property were excess, where the property being transferred is reimbursable by law, unless such requirement for reimbursement can be satisfied or equitably avoided through appropriate accounting procedures.

(2) The receiving bureau shall make reimbursement, determined as though the property were excess in accordance with FPMR 101-47.203-7, in all instances where the property being acquired will be carried in accounts disposals from which are reimbursable.

(f) Determination of real property as excess. Real property not transferred as a result of the circularization prescribed in this Sec. 114-47.203-1 shall be determined to be excess to the needs of the Department of the Interior. The excess determination shall be evidenced in writing and made a part of the disposal file. If reportable in accordance with FPMR 101-47.202, it shall be promptly declared to the General Services Administration. If not reportable under such regulations or IPMR 114-47.202-4, it shall be determined to be surplus promptly in accordance with the provisions of FPMR 101-47.2.

[35 FR 295, Jan. 8, 1970, as amended at 38 FR 9081, Apr. 10, 1973; 40 FR 12080, Mar. 17, 1975; 40 FR 21954, May 20, 1975]

Sec. 114-47.203-2 Transfer and utilization.

The authority to transfer excess real property to other Federal agencies and to obtain excess real property from other agencies has been delegated to the heads of Bureaus and Offices in 205 DM 10. Transfers to and from other agencies shall be made in accordance with the provisions of FPMR 101-47.2.

Sec. 114-47.203-3 Notification of agency requirements.

Because of the nature of the conservation programs carried on by this Department most of its requirements for real property, particularly land, are dictated by such factors as geographical location, topography, engineering and similar characteristics which limit the extent to which excess real property can be utilized. For example, requirements for land for use as a refuge, park, or a dam site are generally for specific land, and land already in Government ownership or control can be utilized for these purposes only when its location and other characteristics coincide with the program need. Therefore, the appropriate GSA regional office shall be notified of requirements for real property only when:

- (a) Specific property is not required, or
- (b) Specific property is required and such property is held in the GSA excess inventory or is held by another Federal agency outside the Department of the Interior.

Note: The provisions of this Sec. 114-47.203-3 do not apply to acquisition by lease of interests in real property as covered in FPMR 101-18.1.

Sec. 114-47.203-7 Transfers.

(a) One copy of GSA Form 1334, Request for Transfer of Excess Real Property and Related Personal Property, shall be furnished the Director, Office of Administration and Management Policy (PM), Office of the Assistant Secretary—Policy, Budget and Administration, when:

- (1) The request seeks to acquire excess real property without reimbursement regardless of the appraised fair market value of the

property, or

(2) The request for transfer involves excess real property having a total appraised fair market value of \$100,000 or more.

(b) Except as provided in IPMR 114-47.203-7(e), transfers of excess real property to Federal agencies outside of the Department of the Interior must have the prior approval of the General Services Administration. Bureaus and offices holding excess real property which is subject to this prior approval shall refrain from making commitments to other Federal agencies regarding transfer of such property. Any inquiries received from potential transferees shall be referred to the appropriate GSA regional office for determination.

(c)-(d) [Reserved]

(e) FPMR 101-47.203-7(e) provides that certain categories of excess real property may be transferred by the holding agency without reference to GSA. In addition to the categories listed, Bureaus and offices of this Department may transfer, without reference to GSA, any excess real property having an estimated fair market value of less than \$1,000 in accordance with the authority delegated in 205 DM 10.3A(6).

(f) Whenever a Bureau or office seeks to acquire excess real property without reimbursement, the certification required by FPMR 101-47.203-7(f)(2)(iii) shall be signed by an official not below the Chief Administrative Officer of the Bureau. Similarly, whenever Block 9 of GSA Form 1334 is checked to indicate that funds are not available for reimbursement for the transfer of the property, the certification in Block 10 of such form shall be signed by an official not below the Chief Administrative Officer of the Bureau.

[36 FR 24004, Dec. 17, 1971, as amended at 39 FR 12989, Apr. 10, 1974; 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.203-8 Temporary utilization.

Interior regulations governing the temporary use, by another Federal agency, of real property determined to be excess to Department of the Interior needs are contained in IPMR 114-47.51.

Sec. 114-47.204 Determination of surplus.

Sec. 114-47.204-2 Property excepted from reporting.

Excess property having an estimated fair market value of less than \$1,000, and not designated for utilization by another Federal agency, is subject to determination as surplus by the holding Bureau or Office in addition to the nonreportable properties listed in FPMR 101-47.202-4.

Sec. 114-47.301 General provisions of subpart.

Sec. 114-47.301-3 Disposals under other laws.

Numerous special statutes are on the books which authorize the Secretary to dispose of real property no longer needed for program purposes by the holding Bureau or Office. Many of these laws predate the Federal Property and Administrative Services Act of 1949, as amended. Where such special law provides that disposal will be made to the general public, as opposed to a specific named individual, firm, or organization, disposal shall be subject to the utilization and disposal provisions of IPMR 114-47.

Sec. 114-47.301-5 Records and reports.

A Report of Surplus Real Property Disposals and Inventory, GSA Form 1100, shall be prepared annually on a fiscal year basis by each Bureau and Office holding real property. The report shall be prepared and submitted in accordance with FPMR 101-47.4903 and the following supplemental instructions:

- (a) Preparation. (1) The report should include only surplus real property inventory and disposals which are being transacted by Interior Bureaus and Offices pursuant to disposal authorities delegated to the Department in FPMR 101-47.302-2, 101-47.603, and any special one-

time disposal authority which may be delegated by the General Services Administration.

(2) Transfers of available real property between Interior Bureaus and transfers of excess real property to other Federal agencies outside Interior should not be reported on GSA Form 1100. However, in the event real property is withdrawn from the surplus inventory for further Federal agency utilization, the transaction should be reported on Line 13 of the form.

(3) Note that disposal transactions, as well as inventory data, are to be reported on the basis of “locations”—not number of transactions, parcels of land, buildings, etc.

(b) Submission and due date. GSA Form 1100 shall be submitted in original only, to the Director, Office of Acquisition and Property Management by not later than the 25th of July of each year. Negative reports are required and may be submitted in the form of a memorandum in lieu of GSA Form 1100.

[37 FR 5250, Mar. 11, 1972, as amended at 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.302 Designation of disposal agencies.

Sec. 114-47.302-2 Holding agency.

The disposal authority conferred in the Secretary by this subsection has been delegated to heads of Bureaus and Offices in 205 DM 10.

Sec. 114-47.304 Advertised and negotiated disposals.

Sec. 114-47.304-8 Report of identical bids.

(a) The reporting requirements specified in FPMR 114-47.304-8 are applicable to all sales of Government-owned property made on a competitive basis whether competition is obtained through sealed bid, negotiation, auction, or spot bid procedures. They apply to:

(1) Program sales made pursuant to special statutes authorizing the Secretary of the Interior to sell specific real properties, and

(2) Sales of surplus real property made pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

(b) Reports on identical bids required by this subsection shall be submitted by the heads of Bureaus and Offices directly to the Attorney General in accord with FPMR 101-47.304-8. A copy of the transmittal letter and a copy of the abstract of bids shall be furnished to the Chief, Division of Property Management, Office of Acquisition and Property Management.

[40 FR 21954, May 20, 1975]

Sec. 114-47.304-12 Explanatory statements.

(a) Explanatory statements required to be submitted to the General Services Administration for transmittal to the committees of the Senate and House of Representatives pursuant to FPMR 101-47.304-12 shall be prepared following the outline shown in FPMR 101-47.4911. Such statements shall be submitted as attachments to a transmittal letter addressed to the Administrator, General Services Administration, Washington, D.C. 20405, prepared for the signature of the Assistant Secretary—Policy, Budget and Administration.

(b) The background and justification portion of this submission shall be a narrative statement fully showing that the property is in fact surplus (e.g., the goods and services produced by the property are no longer needed), and a complete justification both for the decision to sell at all, and to sell by negotiation rather than advertising.

(c) Twenty-two (22) mimeographed copies of such notices shall be submitted to the Assistant Secretary—Policy, Budget and Administration, twenty (20) of which are for submission to the General Services Administration and transmittal to the appropriate committees of the Congress. The letter transmitting each such notice to the

Assistant Secretary—Policy, Budget and Administration, shall include any additional supporting data as may not be incorporated in the “background and justification” portion of the explanatory statement.

[35 FR 298, Jan. 8, 1970, as amended at 36 FR 17038, Aug. 27, 1971; 38 FR 8159, Mar. 29, 1973]

Sec. 114-47.304-50 Sales to Government employees.

In instances where this Department acts as disposal agency, surplus real property may be disposed of by sale, lease, or otherwise to Federal employees or their spouses only where all of the following conditions are met:

(a) The invitation for bids states the extent to which Federal employees are eligible to bid and requires Federal employees to identify themselves, their organization, and position, with similar information from spouses.

(b) Notice is given that no awards will be made to Federal employees or their spouses who might reasonably be expected to have information with regard to the property or its uses which is not readily available to members of the public, or who participated in the decision to dispose of the property, or in the sale itself.

(c) The sale is conducted under publically advertised, sealed bid procedures.

Note: Disposals under this paragraph apply only to actions taken pursuant to the Federal Property and Administrative Services Act of 1949, as amended. For disposals of public lands to employees of the Department, see 43 CFR Part 7.

Sec. 114-47.304-51 Noncollusive bids and proposals.

(a) Certificate of independent price determination: A certificate of independent price determination shall be required with each bid or offer for the purchase of real property, except where the price is fixed in advance of sale pursuant to law or regulation.

(1) The certificate of independent price determination clause contained in Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, shall be included in all invitations for bids and requests for quotations on Government sales of real property and shall be submitted with sealed bids and written quotations submitted in response thereto.

(2) Auction and spot bid sales: Bureaus and Offices conducting sales of Government property by the auction or spot bid methods shall include an appropriate provision in the sales notice which will put the successful bidder on notice that he will be required, as a condition of award, to sign a certificate to the effect that “the bid was arrived at by the bidder or offeror independently, and was tendered without collusion with any other bidder or offeror.”

(3) The requirement for a certificate of independent price determination applies to sales of surplus real property and to program sales made pursuant to special statutes as referred to in IPMR 114-47.304-8(a).

(b) The authority to make the determination described in paragraph (d) of Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, is vested in the head of Bureaus and Offices and may not be redelegated.

(c) Reporting suspected antitrust violations: Whenever any Bureau or Office has factual information leading it to believe or suspect that bids received in response to a sales offering evidence of collusion on the part of two or more bidders designed to eliminate competition, full particulars shall be submitted to the Solicitor for consideration and possible referral to the Attorney General. This submission should include a summary of the pertinent facts concerning the reported case and, in the case of a formally advertised sale, a copy of the Invitation for Bids, the Abstract of Bids, and the bid of bidder(s) suspected of irregular practices; the name of the successful bidder and reason why the award was made to him; and any other information available which

might tend to establish possible violation of the antitrust laws. Reports required by this paragraph are in addition to and not in lieu of the identical bid reports required by IPMR 114-47.304-8.

(1) Reporting procedure: Reports of suspected antitrust violations should be transmitted to the Solicitor in the following format:

Assistant Attorney General,
Antitrust Division,
Department of Justice,
Washington, D.C. 20530.

Dear Sir: We transmit to you a case where bids received in response to Invitation No. _____ for (item(s) description), to be sold (sale date), were opened by (selling bureau or office and location) on _____, 19____. Evidence of collusion or other conduct in violation of antitrust laws is herewith reported as follows:

Award was made to_____. (In the next sentence explain the method by which the successful bidder was selected, i.e., high bidder, etc., unless all bids were rejected and the sale effected by readvertisement or negotiation, in which case, furnish details.)

Sincerely yours,

Solicitor.

Enclosure:

(2) The following copies are required:

- (i) Original on "Office of the Solicitor" stationery
- (ii) Shadow copy to accompany the original on letterhead tissue
- (iii) White surname box copy on letterhead tissue
- (iv) White letterhead tissue copy to be marked "Docket Copy"
- (v) White letterhead tissue copy to be marked "Director, Office of Acquisition and Property Management."
- (vi) Other information copies as may be required by the Bureau or Office.

[35 FR 298, Jan. 8, 1970, as amended at 36 FR 221, Jan. 7, 1971; 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.304-52 Compliance review.

The head of each Bureau and Office engaged in programs which involve the conduct of sales of Government property in the categories referred to in IPMR 114-47.304-8(a) shall install an appropriate monitoring system at the headquarters office level to ensure compliance with the provisions of IPMR 114-47.304-8 and 114-47.304-51. The monitoring system installed by each Bureau and Office will be subject to review by the Department's internal audit staff to determine its adequacy and effectiveness.

[36 FR 221, Jan. 7, 1971]

Sec. 114-47.308 Special disposal provisions.

[35 FR 10434, June 26, 1970]

Sec. 114-47.308-3 Property for historic monument sites.

The Director, Bureau of Outdoor Recreation, shall make all determinations and perform all other functions assigned to the Secretary in FPMR 101-47.308-3. The authority to exercise the authority conferred in the Secretary by FPMR 101-47.308-3 has been delegated to the Director, Bureau of Outdoor Recreation in 248 DM 1.

[36 FR 14741, Aug. 11, 1971]

Sec. 114-47.308-7 Property for use as public park or recreation areas.

The Director, Bureau of Outdoor Recreation, shall make all

determinations and perform all other functions assigned to the Secretary in FPMR 101-308-7. The authority to exercise the authority conferred in the Secretary by FPMR 101-47.308-7 has been delegated to the Director, Bureau of Outdoor Recreation in 248 DM 1.

[36 FR 14741, Aug. 11, 1971]

Sec. 114-47.401 General provisions of subpart.

[35 FR 299, Jan. 8, 1970]

Sec. 114-47.401-6 Interim use and occupancy.

Interior regulations governing the temporary use, by another Federal agency, of surplus real property are contained in IPMR 114-47.51.

[35 FR 299, Jan. 8, 1970]

Sec. 114-47.501 General provisions of subpart.

Sec. 114-47.501-4 Findings.

(a) The findings specified in this subsection shall be documented in the form of an approved Report of Survey.

(b) For purposes of FPMR 101-47.501-4(b), a reviewing authority shall be the same as specified in IPMR 114-44.501-2.

Sec. 114-47.503 Abandonment and destruction.

Sec. 114-47.503-1 General.

The findings specified in FPMR 101-47.503-1 shall be made by an official not below a regional, area, or State Director.

Sec. 114-47.503-3 Abandonment or destruction without notice.

Findings justifying abandonment or destruction of real property without public notice shall be documented in the form of a Report of Survey approved by an appropriate reviewing authority. (See IPMR 114-44.501-2.)

Sec. 114-47.603 Delegation to the Department of the Interior.

(a) The authority conferred in the Secretary by FPMR 101-47.603 has been delegated to the heads of Bureaus and Offices in 205 DM 10.

(b) Available real property having an estimated fair market value of less than \$1,000 shall be screened in accordance with the provisions of IPMR 114-47.203-1(b) before a determination of excess or surplus is made.

[37 FR 20543, Sept. 30, 1972]

Sec. 114-47.800 Scope of subpart.

This subpart prescribes basic policies and procedures for periodic review of real property in the custody of Bureaus and Offices of the Department to identify that which is unneeded, is underutilized, or is not being put to its optimum use. It implements Bureau of the Budget Circular No. A-2, revised, dated August 30, 1971, and FPMR 101-47.8.

(a) The provisions of this subpart are applicable to the following Federal real property holdings in custody of this Department, wherever located:

(1) Land acquired by purchase, condemnation, donation, lease, or other methods, except lands exempted as provided in IPMR 114-47.800(b);

(2) Withdrawn public domain land, except that used for National Park, National Forest, or wildlife refuge purposes. Refer also to 603 DM 1 which establishes Departmental policy relating to the review and restoration, in whole or in part, of withdrawn land no longer used or required for the programs for which withdrawn; and

(3) Buildings, and other structures and facilities acquired by

purchase condemnation, construction, donation, lease, or other methods, including Government-owned buildings, structures, and facilities located on:

- (i) Withdrawn public domain land;
- (ii) Lands exempted from the provisions of this subpart by IPMR 114-47.800(b); or
- (iii) Other than Government-owned land.
- (b) This subpart does not apply to the following properties:
 - (1) Unreserved public domain land administered by the Bureau of Land Management;
 - (2) Rights-of-way or easements granted to the Government;
 - (3) Indian tribal and trust properties;
 - (4) Oregon and California revested lands (43 U.S.C. 1181a);
 - (5) Reconveyed Coos Bay Wagon Road Land Grant lands (43 U.S.C. 1181a);
 - (6) Land administered by the National Park Service, other than administrative sites outside of the established boundaries of a national park;
 - (7) Land on Indian reservations within consolidation areas approved by the Secretary of the Interior;
 - (8) Land within the National Wildlife Refuge System;
 - (9) Bankhead-Jones lands administered under a land conservation and utilization program in accordance with the Taylor Grazing Act of 1934 (48 Stat. 1269);
 - (10) Land reserved or dedicated for national forest purposes; and
 - (11) Real property which is to be sold or otherwise disposed of and which was acquired through foreclosure, confiscation, or seizure in settlement of a claim of the Federal Government, or through conveyance to the Federal Government in connection with an indemnity or loan insurance or guarantee program.

Sec. 114-47.802 Procedures.

(a) Annual review by Bureaus and Offices. Each Bureau and Office having jurisdiction over real property in the categories referred to in IPMR 114-47.800(a) shall conduct a systematic annual review of all such property to identify that which is unneeded, is underutilized, or is not being put to its optimum use. Every effort shall be made to effect partial disposals of real property whenever circumstances will permit economic separate disposal of the unneeded portion.

(1) In conducting the annual review, Bureaus and Offices shall be guided by the standards and guidelines set forth in FPMR 101-47.801, in addition to the disposal criteria prescribed in IPMR 114-47.802-50.

(2) In addition to the written record of the review of each individual installation required by FPMR 101-47.802(a)(2), a written descriptive listing of all properties identified as unneeded, underutilized, or not being put to optimum use shall be maintained as provided in IPMR 114-47.802-53(b).

(3) The head of each Bureau or Office or his designee is authorized to make the determination contemplated by FPMR 101-47.802(a)(3)(i)(B).

(i) The requirement found in FPMR 101-47.802(a)(3)(i)(B) for obtaining the approval of the appropriate GSA regional office before issuing permits or out-leases authorizing others to use temporarily unutilized property does not apply to:

(a) Permits or leases involving real property which is not subject to the provisions of Office of Management and Budget Circular No. A-2 or this Subpart 114-47.8. (See IPMR 114-47.800(b)), or

(b) Permits authorizing other Interior Bureaus or Offices to use property temporarily not being used by the holding Bureau.

(ii) Where a Bureau or Office administers large numbers of program leases such as agricultural leases, or grazing leases or permits on withdrawn public domain land, the appropriate regional office of GSA should be requested to approve the overall leasing program, thus obviating the need to request approval of each individual lease or permit as issued.

(b) GSA survey. (1) Bureaus and Offices shall cooperate fully with

GSA officials conducting surveys of real property holdings under their jurisdiction in order to facilitate the overall objectives of the real property review program.

(2) Notifications of GSA survey findings received in the Office of the Secretary from the GSA Central Office in accordance with FPMR 101-47.802(b)(5), will be forwarded to the Bureau or Office having custody of the property involved. Referrals to Bureaus and Offices will include a request for their comments and recommendations in any cases where GSA recommends that specific properties should be reported excess.

Sec. 114-47.802-50 Disposal criteria.

The disposal criteria set forth in this subsection are provided for the use and guidance of Bureaus and Offices in conducting the review of real property holdings and achieving effective and economical use of such property. These criteria are in addition to the standards and guidelines prescribed in FPMR 101-47.801.

(a) Property not utilized—no future use. Property not presently used in the Bureau's program for which acquired and for which there is no foreseeable future need should be disposed of promptly by:

(1) Intrabureau transfer, transfer to other Interior Bureaus, declaration to GSA as excess, or disposal as surplus pursuant to authority delegated in 205 DM 10, or

(2) Reporting to the Bureau of Land Management in the case of unneeded withdrawn public domain land. (See IPMR 114-47.201-3.)

(b) Property not presently utilized—known future need. Property not presently being used, but for which a definite future program need exists should be retained: Provided, That the property will be put to its optimum use when the future program is undertaken. Reasonable efforts should be made to put property in this category into productive use during the period it would otherwise remain vacant or idle (see IPMR 114-47.802(a)(3)), either by:

(1) Permitting another Interior Bureau of Federal agency to use the property on an interim basis, or

(2) Interim leasing to non-Federal entities: Provided, That the holding Bureau or Office has specific statutory authority to lease temporarily unused property. (See 15 CG 96.)

(c) Property not presently utilized—possible future need. This pertains to property not presently used in the Bureau's program, but for which a possible future need exists. The less certain or farther away this possible future need is, the greater consideration must be given to disposal, particularly if the property is not unique and replacement property could be acquired later if the need materializes.

(d) High value locations. An essential Bureau activity being carried on at a valuable real estate site might not be using such site to its full economic advantage. For example, at the time of acquisition the site may have been in an outlying area, but may now be within the growing community. Such land is not unneeded or excess, since there is a continuing program need for the installation, but the present land could be sold for substantially more than the cost of suitable replacement facilities and the difference deposited in the Treasury.

(1) In these instances funds for replacement facilities must first be obtained through the normal budgetary processes, justified by the net gain to be realized.

(2) Once the replacement facilities are available, the old facilities should be disposed of as unneeded in the usual manner.

(e) High cost facilities. An essential Bureau activity may be performed in facilities which have such an unusually high annual operation and maintenance cost that replacement is justified. Some examples of this might be:

(1) The work is being performed at several separate locations, with a consequent loss of efficiency and higher costs.

(2) The work is being performed in several small buildings at the one site, and would significantly benefit from operations being consolidated in one building.

(3) The facility is unusually expensive to maintain, due to age or

poor condition.

(4) The facility is so poorly planned or laid out, or so unsuitable for the particular type of activity being carried on, that excess costs are incurred.

(5) The facility is permanently underutilized, and is not susceptible to partial disposal through sharing, rental, sale, etc.

In all of paragraphs (e)(1) through (5) of this section and in similar instances, if the anticipated savings would so warrant, funds for replacement should be sought through the normal budgetary processes, justified by the net savings. Once the replacement facilities are available, the old facilities should be disposed of as unneeded in the usual manner.

(f) Property used by another Federal agency under permit. Property for which a future need was anticipated may be utilized by another Federal agency by permit from the holding Bureau. If reexamination of the anticipated need discloses that such need will not materialize, the Bureau having basic custody of the property should convey the property to the permittee Bureau or agency by formal transfer of accountability.

(g) Property leased to non-Federal entities. Property for which a future need was anticipated may have been leased on an interim basis to a non-Federal entity. If reexamination of the anticipated need discloses that such need will not materialize, the property should be disposed of, subject to the provisions of the lease.

Sec. 114-47.802-51 Funds and statutory authority.

There may be cases where it will be necessary to secure additional funds or specific legislative authority before disposal of high-value locations or high-cost facilities can be made and the necessary replacement facilities acquired. However, this circumstance must not delay the making of necessary surveys in order to identify properties in these categories or the initiation of specific proposals looking toward replacement. Proposals should be supported by estimates of replacement costs and ultimate net savings. In seeking replacement facilities:

(a) Such action as can be taken without additional funds or statutory authority should be initiated at the earliest practicable time;

(b) Consideration should be given to obtaining available and excess property presently held by other Interior Bureaus and other Federal agencies; and

(c) The appropriate regional office of the General Services Administration should be contacted to determine whether suitable excess replacement facilities are available for transfer or expected to become available within a reasonable time.

Sec. 114-47.802-52 Bureau implementation.

In those Bureaus having large and varied real property holdings, the general instructions in this chapter require further development for effective application within the Bureau, particularly with respect to the following:

(a) Retention criteria. Bureau implementation should include, to the extent possible, uniform retention criteria for specific properties for the guidance of field personnel conducting the annual review required by IPMR 114-47.802. The following is an example of retention criteria which might be developed.

It may be determined that a certain amount of land is needed to accommodate a particular type or size of facility, such as an administrative site, boarding school, day school, etc. Where this determination can be made the needed acreage should be specified and any held for this purpose in excess of that amount should be considered for disposal.

(b) Partial disposals. Bureau instructions should make clear that it is not enough for a field office official to determine, for example, that a

program using 1,000 acres of land will continue to be carried on, but a further determination should be made as to the need to retain the entire 1,000 acres and whether or not a part of the acreage can be made available for other utilization or disposal. It might still be necessary to provide employee housing, but 50 units might now be adequate and 10 units released. The units of property to be released must, of course, be of a nature or so located that they are susceptible of economic separate disposal.

(c) Underutilization and uneconomical utilization. These situations may be common or typical of certain phases of the Bureau's program at some locations, and further criteria are needed to show either how they may be overcome or else why they must be accepted as a temporary condition due to the program requirements.

(d) Program utilization. There is a definite need for Bureau particularization on what constitutes program utilization, as distinguished from non-program but authorized utilization. There are many legitimate and necessary instances of utilization of real property for nonprogram purposes, usually of a temporary nature, but such use does not give it a program status. One rule of thumb might be whether program funds would be expended to purchase land or construct buildings for present uses of existing real property.

(e) Inspection and field review. The Bureau headquarters and regional staff members responsible for this aspect of real property management shall include checking the effectiveness of compliance and understanding at the regional and installation level, of this program, particularly on the completeness of both regional and installation reports, and the development of adequate techniques for the survey at the installation level.

Sec. 114-47.802-53 Intrabureau records.

The head of each Bureau having jurisdiction over real property shall issue instructions to provide that each office responsible for conducting the prescribed annual review of real property holdings shall:

(a) Maintain a written record of the review of each individual installation, which record will contain comments relative to each of the guidelines set forth in FPMR 101-47.801(b).

(b) Maintain a written descriptive listing of all properties or portions of properties identified during each annual review as unneeded, underutilized, or not being put to optimum use, whether or not disposal action is going to be taken on the properties.

Sec. 114-47.802-54 Annual report to the Department.

The head of each Bureau or Office having jurisdiction over real property shall prepare an annual report, as of the end of each fiscal year, summarizing the actions taken by the Bureau or Office to implement the provisions of this Subpart 114-47.8. The report will:

(a) Include consolidated reports for the Bureau in the form of Appendices I, II, III of this subpart. /1/ These Appendices illustrate the format and the order in which the requested data are to be reported and should be followed to facilitate processing by the Department and transmittal to the Office of Management and Budget.

NOTE 1 Filed as part of the original document.

(b) Include in the memorandum transmitting Appendices I, II, and III, the following:

(1) A narrative statement describing, in general the actions taken during the fiscal year to comply with the provisions of this Subpart 114-47.8. The narrative shall include, but not necessarily be limited to:

(i) A description of the analytical methods used to determine that properties not listed in Appendices I and II are being put to optimum use.

(ii) Actions taken to strengthen procedures for meeting the objectives of the annual review program.

(iii) Actions taken by the head of the bureau and headquarters office staff to insure full compliance with Office of Management and Budget,

General Services Administration, and Departmental regulations at all levels within the bureau.

(2) A description of any particular problems encountered by the Bureau in the management of real property.

(3) Recommendations as to actions which might be taken by the Property Review Board, the Office of Management and Budget, the General Services Administration, or the Department to improve the management of real property.

(c) Include, as attachments to the transmittal memorandum, two copies of new or revised manual or other instructions issued by the Bureau during the fiscal year. If none were issued, the report should so indicate.

(d) Be prepared, in duplicate, and transmitted to reach the Director, Office of Acquisition and Property Management by August 21 of each year.

[36 FR 22294, Nov. 24, 1971, as amended at 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.5101 Scope of subpart.

This subpart prescribes basic policy and criteria for the granting of permits authorizing other Interior Bureaus or other Federal agencies to use real property in custody of Bureaus and Offices of the Department of the Interior.

Sec. 114-47.5102 Applicability.

The provisions of this subpart are applicable to all Federal real property in custody of this Department of the types referred to in paragraph (a) of this section, wherever located.

(a) Specifically, this subpart applies to utilization by permit of:

(1) Lands; buildings, structures and facilities (including those located on other than Government-owned land) acquired by purchase, condemnation, donation, construction, lease, or other methods; and

(2) Withdrawn public domain land;

(b) This subpart does not apply to use permits involving the following land and properties, but it does apply to Government-owned buildings, structures, and facilities located on such lands:

(1) Unreserved public domain;

(2) Rights of way or easements granted to the Government;

(3) Indian tribal and trust properties;

(4) Oregon and California revested lands (43 U.S.C. 1181a);

(5) Land administered by the National Park Service, other than administrative sites outside of the established boundaries of a national park;

(6) Land on Indian reservations within consolidation areas approved by the Secretary of the Interior;

(7) Land within the National Wildlife Refuge System; and

(8) Real property which is to be sold or otherwise disposed of and which was acquired through foreclosure, confiscation, or seizure in settlement, of a claim of the Federal Government, or through conveyance to the Federal Government in connection with an indemnity or loan insurance or guarantee program.

Sec. 114-47.5103 Definition of permit.

For purposes of this subpart, a permit is defined to mean the temporary authority conferred on one Government agency to use property under the jurisdiction of another Government agency.

Sec. 114-47.5104 Authority.

While no statutory authority is required to execute a permit authorizing the use of property by another Federal agency, such use may be granted only in the following instances:

(a) Nonexcess property. When it has been determined by the head of the Bureau or Office, or his designee(s), that there is a present or future program requirement for the property, and the proposed use by the requesting agency conforms to the acquisition and use provisions of Bureau of the Budget Circular No. A-2, Revised, dated April 5, 1967.

(b) Excess or surplus property in process of disposal. Excess or surplus real property may be made available for short term use by permit during the period it is being processed for further Federal use or disposal as provided in paragraphs (b)(1) and (2), of this section; Provided, That the requesting agency conforms to the provisions of Bureau of the Budget Circular No. A-2, Revised, dated April 5, 1967; And provided further, That such temporary use or occupancy will not interfere with, delay, or retard its transfer to another Federal agency, or disposal.

(1) Permits granting interim use of the following properties may be executed without the approval of the General Services Administration:

(i) Excess or surplus real property, including land with or without improvements, having an estimated fair market value of less than \$1,000, and

(ii) Surplus improvements of any kind having an estimated fair market value of \$1,000 or more to be disposed of without the underlying land. A permit may not be issued, however, until the surplus determination has been made by the General Services Administration.

(2) Permits granting interim use of the following properties may be executed only with the approval of the General Services Administration in each instance:

(i) Excess improvements of any kind, having an estimated fair market value of \$1,000 or more, to be disposed of without the underlying land. In the event such improvements are subsequently determined by the General Services Administration to be surplus permits may be granted pursuant to IPMR 114- 47.5104(b)(1)(ii).

(ii) Excess or surplus land, with or without improvements, having an estimated fair market value of \$1,000 or more.

Sec. 114-47.5105 Limitations.

The head of each Bureau or Office should impose such additional limitations on the granting of use permits as he deems necessary for effective utilization and disposition of real property in the custody of his Bureau.

43 CFR Part 2370: Bureau of Land Management

43 CFR PART 2370—RESTORATIONS AND REVOCATIONS

Subpart 2370—Restorations and Revocations; General

Sec.

2370.0-1 Purpose.

2370.0-3 Authority.

Subpart 2372—Procedures

2372.1 Notice of intention to relinquish action by holding agency.

2372.2 Report to General Services Administration.

2372.3 Return of lands to the public domain; conditions.

Subpart 2374—Acceptance of Jurisdiction by BLM

2374.1 Property determinations.

2374.2 Conditions of acceptance by BLM.

AUTHORITY: 63 Stat. 377 as amended, R.S. 2478; 40 U.S.C. 472, 43 U.S.C. 1201.

Subpart 2370—Restorations and Revocations; General

Sec. 2370.0-1 Purpose.

The regulations of this Part 2370 apply to lands and interests in lands withdrawn or reserved from the public domain, except lands reserved or dedicated for national forest or national park purposes, which are no longer needed by the agency for which the lands are withdrawn or reserved.

[35 FR 9558, June 13, 1970]

Sec. 2370.0-3 Authority.

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, governs the disposal of surplus Federal lands or interests in lands. Section 3 of that Act (40 U.S.C. 472), as amended, February 28, 1958 (72 Stat. 29), excepts from its provisions the following:

- (a) The public domain.
- (b) Lands reserved or dedicated for national forest or national park purposes.
- (c) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws.
- (d) Lands withdrawn or reserved from the public domain, but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of the General Services Administration, determines are not suitable for return to the public domain for disposition under the general public-land laws, because such lands are substantially changed in character by improvements or otherwise.

[35 FR 9558, June 13, 1970]

Subpart 2372—Procedures

Source: 35 FR 9558, June 13, 1970, unless otherwise noted.

Sec. 2372.1 Notice of intention to relinquish action by holding agency.

(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper office (see Sec. 1821.2-1 of this chapter).

(b) No specific form of notice is required, but all notices must contain the following information:

- (1) Name and address of the holding agency.
- (2) Citation of the order which withdrew or reserved the lands for the holding agency.
- (3) Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them.
- (4) Description of the improvements existing on the lands.
- (5) The extent to which the lands are contaminated and the nature of the contamination.
- (6) The extent to which the lands have been decontaminated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures.
- (7) The extent to which the lands have been changed in character other than by construction of improvements.
- (8) The extent to which the lands or resources thereon have been disturbed and the measures taken or proposed to be taken to recondition the property.
- (9) If improvements on the lands have been abandoned, a certification that the holding agency has exhausted General Services Administration procedures for their disposal and that the improvements are without value.
- (10) A description of the easements or other rights and privileges which the holding agency or its predecessors have granted covering the lands.
- (11) A list of the terms and conditions, if any, which the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest.
- (12) Any information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it.
- (13) Recommendations as to the further disposition of the lands, including where appropriate, disposition by the General Services Administration.

Sec. 2372.2 Report to General Services Administration.

The holding agency will send one copy of its report on unneeded lands to the appropriate regional office of the General Services Administration for its information.

Sec. 2372.3 Return of lands to the public domain; conditions.

(a) When the authorized officer of the Bureau of Land Management determines the holding agency has complied with the regulations of this part, including the conditions specified in Sec. 2374.2 of this subpart, and that the lands or interests in lands are suitable for return to

the public domain for disposition under the general public land laws, he will notify the holding agency that the Department of the Interior accepts accountability and responsibility for the property, sending a copy of this notice to the appropriate regional office of the General Services Administration.

Subpart 2374—Acceptance of Jurisdiction by BLM

Sec. 2374.1 Property determinations.

(a) When the authorized officer of the Bureau of Land Management determines that the holding agency has complied with the regulations of this part and that the lands or interests in lands other than minerals are not suitable for return to the public domain for disposition under the general public land laws, because the lands are substantially changed in character by improvements or otherwise, he will request the appropriate officer of the General Services Administration, or its delegate, to concur in his determination.

(b) When the authorized officer of the Bureau of Land Management determines that minerals in lands subject to the provisions of paragraph (a) of this section are not suitable for disposition under the public land mining or mineral leasing laws, he will notify the appropriate officer of the General Services Administration or its delegate of this determination.

(c) Upon receipt of the concurrence specified in paragraph (a) of this section, the authorized officer of the Bureau of Land Management will notify the holding agency to report as excess property the lands and improvements therein, or interests in lands to the General Services Administration pursuant to the regulations of that Administration. The authorized officer of the Bureau of Land Management will request the holding agency to include minerals in its report to the General Services Administration only when the provisions of paragraph (b) of this section apply. He will also submit to the holding agency, for transmittal with its report to the General Services Administration, information of record in the Bureau of Land Management on the

claims, if any, by agencies other than the holding agency of primary, joint, or secondary jurisdiction over the lands and on any encumbrances under the public land laws.

[35 FR 9559, June 13, 1970]

Sec. 2374.2 Conditions of acceptance by BLM.

Agencies will not be discharged of their accountability and responsibility under this section unless and until:

(a) The lands have been decontaminated of all dangerous materials and have been restored to suitable condition or, if it is uneconomical to decontaminate or restore them, the holding agency posts them and installs protective devices and agrees to maintain the notices and devices.

(b) To the extent deemed necessary by the authorized officer of the Bureau of Land Management, the holding agency has undertaken or agrees to undertake or to have undertaken appropriate land treatment measures correcting, arresting, or preventing deterioration of the land and resources thereof which has resulted or may result from the agency's use or possession of the lands.

(c) The holding agency, in respect to improvements which are of no value, has exhausted General Services Administration's procedures for their disposal and certifies that they are of no value.

(d) The holding agency has resolved, through a final grant or denial, all commitments to third parties relative to rights and privileges in and to the lands or interests therein.

(e) The holding agency has submitted to the appropriate office mentioned in paragraph (a) of Sec. 2372.1 a copy of, or the case file on, easements, leases, or other encumbrances with which the holding agency or its predecessors have burdened the lands or interests therein.

[35 FR 9559, June 13, 1970]

36 CFR Part 800: Protection of Historic and Cultural Properties

36 CFR PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Subpart A—Background and Policy

Sec.

800.1 Authorities, purposes, and participants.

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Subpart C—Special Provisions

800.10 Protecting National Historic Landmarks.

800.11 Properties discovered during implementation of an undertaking.

800.12 Emergency undertakings.

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800.14 Coordination with other authorities.

800.15 Counterpart regulations.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp., p. 154.

SOURCE: 51 FR 31118, Sept. 2, 1986, unless otherwise noted.

Subpart A—Background and Policy

Sec. 800.1 Authorities, purposes, and participants.

(a) Authorities. Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to

approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the section 106 process.

(b) Purposes of the section 106 process. The Council seeks through the section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special section 106 procedures suited to the agency's needs.

(c) Participants in the section 106 process—(1) Consulting parties. Consulting parties are the primary participants in the section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

(i) Agency Official. The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the section 106 process as appropriate in the manner set forth below.

(ii) State Historic Preservation Officer. The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and

its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in Sec. 800.7 of these regulations.

(iii) Council. The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

(2) Interested persons. Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of section 106, they may invite that person to become a consulting party. Interested persons may include:

(i) Local governments. Local governments are encouraged to take an active role in the section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

(ii) Applicants for Federal assistance, permits, and licenses. When the undertaking subject to review under section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the section 106 process in the manner prescribed in these regulations.

(iii) Indian tribes. The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

(iv) The public. The Council values the views of the public on historic preservation questions and encourages maximum public participation in the section 106 process. The Agency Official, in the

manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the section 106 process.

Sec. 800.2 Definitions.

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with section 106 and section 110(f) in accordance with law.

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1701, et seq.

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

(i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

(l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

(m) "Secretary" means the Secretary of the Interior.

(n) "State Historic Preservation Officer" means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The

project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under section 106.

Subpart B—The Section 106 Process

Sec. 800.3 General.

(a) Scope. The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the section 106 process. Alternative methods of meeting section 106 obligations are found in Sec. 800.7, governing review of undertakings in States that have entered into agreements with the Council for section 106 purposes, and Sec. 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

(b) Flexible application. The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting differing program requirements, as long as the purposes of section 106 of the Act and these regulations are met.

(c) Timing. Section 106 requires the Agency Official to complete the section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the section 106 process that is consistent with the planning and approval schedule for the undertaking.

Sec. 800.4 Identifying historic properties.

(a) Assessing information needs. (1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and
(iii) Seek information in accordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

(b) Locating historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of section 110(a)(2) of the Act.

(c) Evaluating historical significance. (1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for section 106 purposes.

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

(d) When no historic properties are found. If the Agency Official determines in accordance with Sec. 800.4 paragraphs (a) through (c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the section 106 process.

(e) When historic properties are found. If there are historic properties that the undertaking may affect, the Agency official shall assess the effects in accordance with Sec. 800.5.

Sec. 800.5 Assessing effects.

(a) Applying the Criteria of Effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (Sec. 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

(b) When no effect is found. If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the findings, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in Sec. 800.5(c) are followed.

(c) When an effect is found. If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (Sec. 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

(d) When the effect is not considered adverse. (1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (Sec. 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects

but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

(1) Involving interested persons. Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with Sec. 800.1(c)(2)(iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) Documentation. The Agency Official shall provide each of the consulting parties with the documentation set forth in Sec. 800.8(b) and such other documentation as may be developed in the course of consultation.

(3) Informing the public. The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

(4) Agreement. If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with Sec. 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

(5) Amendments. The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with Sec. 800.6.

(6) Ending consultation. The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with Sec. 800.6(b) and notify all other consulting parties of its requests.

Sec. 800.6 Affording the Council an opportunity to comment.

(a) Review of a Memorandum of Agreement. (1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in Sec. 800.8 (b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the section 106 process, and informs all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with Sec. 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

(b) Comment when there is no agreement. (1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in Sec. 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

(c) Response to Council comment. (1) When a Memorandum of Agreement becomes final in accordance with Sec. 800.6(a)(1) (i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with Sec. 800.6.

(2) When the Council had commented pursuant to Sec. 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

(d) Foreclosure of the Council's opportunity to comment. (1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

(e) Public requests to the Council. (1) When requested by any person, the Council shall consider an Agency Official's finding under Secs. 800.4(b), 800.4(c), 800.4(d), or 800.5(b), and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the

National Register, the Council shall refer the matter to the Secretary.
[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

Sec. 800.7 Agreements with States for section 106 reviews.

(a) Establishment of State agreements. (1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of section 106.

(2) The Council, in analyzing a State's review process pursuant to Sec. 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the section 106 process and the capability to administer a comparable process at the State level.

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's Standards and Guidelines for Archaeology and Historic Preservation.

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the Federal Register and make copies of the State agreement available to all Federal agencies.

(b) Review of undertakings when a State agreement is in effect. (1) When a State agreement under Sec. 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with Secs. 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

(c) Monitoring and termination of State agreements. (1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under section 101(b)(1) of the Act. The Council may request

that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) A State agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to Sec. 800.7(c) (2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

Sec. 800.8 Documentation requirements.

(a) Finding of no adverse effect. The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the criteria of adverse effect were found inapplicable; and

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

(b) Finding of adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

(c) Memorandum of Agreement. When a memorandum is submitted for review in accordance with Sec. 800.6(a)(1), the documentation, in addition to that specified in Sec. 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

(d) Requests for comment when there is no agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and

other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

Sec. 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

Subpart C—Special Provisions

Sec. 800.10 Protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in Secs. 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

(a) Any consultation conducted under Sec. 800.5(e) shall include the Council;

(b) The Council may request the Secretary under section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and

(c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

Sec. 800.11 Properties discovered during implementation of an undertaking.

(a) Planning for discoveries. When the Agency Official's identification efforts in accordance with Sec. 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with Sec. 800.5.

(b) Federal agency responsibilities. (1) When an Agency Official has completed the section 106 process and prepared a plan in accordance with Sec. 800.11(a), the Agency Official shall satisfy the requirements of section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) When an Agency Official has completed the section 106 process without preparing a plan in accordance with Sec. 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with Sec. 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to Sec. 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

(c) Council comments. (1) When comments are requested pursuant to Sec. 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Official elects to comply with Sec. 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with Sec. 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

(d) Other considerations. (1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of section 106.

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

Sec. 800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR 78.3, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official

should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and Sec. 800.12(a) does not apply, the Agency Official may satisfy section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, Sec. 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with Secs. 800.4 through 800.6.

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with Secs. 800.4 through 800.6.

[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

Sec. 800.13 Programmatic Agreements.

(a) Application. An Agency Official may elect to fulfill an agency's section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

- (1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;
- (2) When effects on historic properties cannot be fully determined prior to approval;
- (3) When non-Federal parties are delegated major decisionmaking responsibilities;
- (4) That involve development of regional or land-management plans; or
- (5) That involve routine management activities at Federal installations.

(b) Consultation process. The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

(c) Public involvement. The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views

from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

(d) Execution of the Programmatic Agreement. After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

(e) Effect of the Programmatic Agreement. An approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

(f) Notice. The Council shall publish notice of an approved Programmatic Agreement in the Federal Register and make copies readily available to the public.

(g) Failure to carry out a Programmatic Agreement. If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with Secs. 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

Sec. 800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

(b) Designing determinations and agreements to satisfy the terms not only of section 106 and these regulations, but also of the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, section 110 of the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

Sec. 800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with section 106.

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60 FR 35706: Final Rule for Public Benefit Conveyances of Port Facilities

60 *Federal Register* 35706, 11 July 1995

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amendment H-192]

RIN 3090-AF34

Utilization and Disposal of Real Property; Port Facilities

AGENCY: Public Buildings Service, GSA.

ACTION: Final rule.

SUMMARY: Section 2927 of Pub. L. 103-160 (November 30, 1993) amended section 203 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 484) by adding a subsection (q) to provide for cost-free conveyances of Federal surplus real property suitable for use as port facilities. This regulation is required to implement the new subsection. It prescribes the method whereby affected property may be assigned to the Secretary of Transportation for subsequent conveyance for approved port facility and related economic development programs.

EFFECTIVE DATE: July 11, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Real Property Policy, Public Buildings Service, General Services Administration (202) 501-1256.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) is amending its regulations to include procedures for making conveyances of Federal surplus real property to nonfederal political bodies for port facility and related economic development purposes.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

List of subjects in 41 CFR Part 101-47

Government property management, Surplus Government property.

For the reasons set out in the preamble, 41 CFR part 101-47 is amended as follows:

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101-47 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SUBPART 101-47.2—UTILIZATION OF EXCESS REAL PROPERTY

2.-3. Section 101-47.203-5 is amended by revising paragraphs (b) and (c) to read as follows:

Sec. 101-47.203-5 Screening of excess real property.

* * * * *

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested under the provisions of section 203(k)(1) of the Act, and for information of the Secretary of the Interior in connection with the exercise of the authority vested under the provisions of section 203(k)(2) of the Act or a possible determination under the provisions of section 203(k)(3) of the Act, will be sent to the offices designated by the Secretaries to serve the areas in which the properties are located. Similar notices of availability for information of the Attorney General in connection with a possible determination under the provisions of section 203(p)(1) of the Act, and for information of the Secretary of Transportation in connection with the exercise of the authority vested under the provisions of section 203(q) of the Act, will be respectively sent to the Office of Justice Programs, Department of Justice, and the Maritime Administration, Department of Transportation.

(c) The Departments of Health and Human Services, Education, Interior, Justice, and Transportation shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application.

However, these Departments are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

* * * * *

3. Section 101-47.204-1 is amended by revising paragraphs (a) and (b) to read as follows:

Sec. 101-47.204-1 Reported property.

* * * * *

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Attorney General, and the Secretary of Transportation will be notified of the date upon which determination as surplus becomes effective. Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may become available for use under sections 203(e)(3) (G) and (H) of the Act.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Secretary of Transportation will be sent to the Maritime Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

* * * * *

SUBPART 101-47.3—SURPLUS REAL PROPERTY DISPOSAL

4. Section 101-47.303-2 is amended by revising paragraphs (d), (f), and (g) to read as follows:

Sec. 101-47.303-2 Disposals to public agencies.

* * * * *

(d) A copy of the notice described in paragraph (b) of this section shall be furnished to the appropriate regional or field offices of (1) the National Park Service (NPS) and the Fish and Wildlife Service of the Department of the Interior and (2) the Federal Aviation Administration, the Federal Highway Administration, and the Maritime Administration of the Department of Transportation concerned with the disposal of property to public agencies under the statutes named in the notice.

* * * * *

(f) If the disposal agency is not informed within the 29-calendar-day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in Sec. 101-47.4905, or is not notified by ED or HHS of a potential

educational or public health requirement, or is not notified by the Department of the Interior of a potential park or recreation requirement, or is not notified by the Department of Justice (DOJ) of a potential correctional facilities use, or is not notified by the Department of Transportation (DOT) of a potential port facility use; it shall be assumed that no public agency or nonprofit institution desires to procure the property. (The requirements of this Sec. 101-47.303-2(f) shall not apply to the procedures for making Federal surplus real property available to assist the homeless in accordance with Section 501 of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11411).)

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

- (1) National Park Service, Department of the Interior;
- (2) Department of Health and Human Services;
- (3) Department of Education;
- (4) Federal Aviation Administration, Department of Transportation;
- (5) Fish and Wildlife Service, Department of the Interior;
- (6) Federal Highway Administration, Department of Transportation;
- (7) Office of Justice Programs, Department of Justice; and
- (8) Maritime Administration, Department of Transportation.

* * * * *

5. Section 101-47.308-2 is amended by revising paragraph (a) to read as follows:

Sec. 101-47.308-2 Property to public airports.

* * * * *

(a) Pursuant and subject to the provisions of section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151), airport property may be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport. Airport property is any surplus real property including improvements and personal property located thereon as a part of the operating unit (exclusive of property the highest and best use of which is determined by the Administrator of General Services to be industrial and which shall be so classified for disposal without regard to the provisions of this section) which, in the determination of the Administrator of the Federal Aviation Administration (FAA) is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101), or reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from nonaviation businesses at a public airport.

* * * * *

6. Section 101-47.308-10 is added to read as follows:

Sec. 101-47.308-10 Property for port facility use.

(a) Under section 203(q)(1) of the Act, in his/her discretion, the Administrator, the Secretary of the Department of Defense (DOD) in the case of property located at a military installation closed or realigned pursuant to a base closure law, or the designee of either of them, may, as the disposal agency, assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision, municipality, or instrumentality thereof, such surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, as is recommended by DOT as being needed for the development or operation of a port facility.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use in the development or operation of a port facility has been determined to be surplus. A copy of such notice shall be transmitted to DOT accompanied by a copy of the holding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

(c) The notice to eligible public agencies shall state:

(1) that any planning for the development or operation of a port facility, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with DOT;

(2) that any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for instructions concerning submission of an application; and

(3) that the requirement for use of the property in the development or operation of a port facility will be contingent upon approval by the disposal agency, under paragraph (i) of this section, of a recommendation from DOT for assignment of the property to DOT and that any subsequent conveyance shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(q)(2) of the Act and referenced in paragraph (j) of this subsection.

(d) DOT shall notify the disposal agency within 20 calendar-days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever the disposal agency, has been so notified of a potential port facility requirement for the property, DOT shall submit to the disposal agency, within 25 calendar-days after the expiration of the 20-calendar-day notification period, either a recommendation for assignment of the property or a statement that a recommendation will not be submitted.

(e) Whenever an eligible public agency has submitted a plan of use for property for a port facility requirement, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan to DOT. DOT shall either submit to the disposal agency, within 25 calendar-days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the 25-calendar-day period, that a recommendation will not be made for assignment of the property to DOT.

(f) Any assignment recommendation submitted to the disposal agency by DOT shall be accompanied by a copy of the explanatory statement required under section 203(q)(3)(C) of the Act and shall set forth complete information concerning the contemplated port facility use, including:

(1) an identification of the property;

(2) an identification of the applicant;

(3) a copy of the approved application, which defines the proposed plan of use of the property;

(4) a statement that DOT's determination that the property is located in an area of serious economic disruption was made in consultation with the Secretary of Labor; and

(5) a statement that DOT's approval of the economic development plan associated with the plan of use of the property was made in consultation with the Secretary of Commerce.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of DOT and the Secretary of Commerce in their inspection of such property, and of the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating thereto.

(h) In the absence of an assignment recommendation from DOT submitted pursuant to paragraph (d) or (e) of this section, and received within the 25- calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, it shall assign the property by letter or other document to DOT. If the recommendation is disapproved, the disposal agency shall likewise notify DOT. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the letter of assignment from the disposal agency, DOT shall furnish to the disposal agency, a Notice of Proposed Conveyance in accordance with section 203(q)(2) of the Act. If the disposal agency has not disapproved the proposed transfer within 35 calendar-days of the receipt of the Notice of Proposed Conveyance, DOT may proceed with the conveyance.

(k) DOT shall furnish the Notice of Proposed Conveyance within 35 calendar- days after the date of the letter of assignment from the disposal agency, prepare the conveyance documents, and take all necessary actions to accomplish the conveyance within 15 calendar-days after the expiration of the 30-calendar-day period provided for the disposal agency to consider the notice. DOT shall furnish the disposal agency two conformed copies of the instruments conveying property under subsection 203(q) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

(l) DOT has the responsibility for enforcing compliance with the terms and conditions of conveyance; for reformation, correction, or amendment of any instrument of conveyance; for the granting of release; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of subsection 203(q)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency, by DOT, of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a reversion of title by reason of noncompliance with the terms or conditions of conveyance or other cause, DOT shall, at or prior to such reversion of title, provide the appropriate GSA regional office, with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and appropriate accompanying schedules shall be used for this purpose. Upon receipt of advice from DOT that such property has been repossessed, GSA will review and act upon the Standard Form 118. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

SUBPART 101-47.49—ILLUSTRATIONS

7. Section 101-47.4905 is revised to read as follows:

Sec. 101-47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.

Statute: 16 U.S.C. 667b-d. Disposals for wildlife conservation purposes.

Type of property*: Any surplus real property (with or without improvements) that can be utilized for wildlife conservation purposes other than migratory birds, exclusive of (1) oil, gas, and mineral rights, and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: The agency of the State exercising the administration of the wildlife resources of the State.

Statute: 23 U.S.C. 107 and 317. Disposals for Federal aid and other highways.

Type of property*: Any real property or interests therein determined by the Secretary of Transportation to be reasonably necessary for the right-of-way of a Federal aid or other highway (including control of access thereto from adjoining lands) or as a source of material for the construction or maintenance of any such highway adjacent to such real property or interest therein, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State wherein the property is situated (or such political subdivision of the State as its law may provide), including the District of Columbia and Commonwealth of Puerto Rico.

Statute: 40 U.S.C. 122. Transfer to the District of Columbia of jurisdiction over properties within the District for administration and maintenance under conditions to be agreed upon.

Type of property: Any surplus real property, except property for which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: District of Columbia.

Statute: 40 U.S.C. 345c. Disposals for authorized widening of public highways, streets, or alleys.

Type of property*: Such interest in surplus real property as the head of the disposal agency determines will not be adverse to the interests of the United States, exclusive of (1) oil, gas and mineral rights; (2) property subject to disposal for Federal aid and other highways under the provisions of 3 U.S.C. 107 and 317; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State or political subdivision of a State.

Statute: 40 U.S.C. 484(e)(3)(H). Disposals by negotiations.

Type of property: Any surplus real property including related personal property.

Eligible public agency: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported agency in any of them.

Statute: 40 U.S.C. 484(k)(1)(A). Disposals for school, classroom, or other educational purposes.

Type of property*: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding

agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported educational institution in any of them.

Statute: 40 U.S.C. 484(k)(1)(B). Disposals for public health purposes including research.

Type of property*: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported medical institution in any of them.

Statute: 40 U.S.C. 484(k)(2). Disposals for public park or recreation areas.

Type of property*: Any surplus real property recommended by the Secretary of the Interior as being needed for use as a public park or recreation area, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(k)(3). Disposals for historic monuments.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Interior must determine that the property is suitable and desirable for use as a historic monument for the benefit of the public. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments established by section 3 of the act entitled "An Act for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved Aug. 21, 1935 (49 Stat. 666), and only so much of any such property shall be so determined to be suitable or desirable for such use as is necessary for the preservation and property observation of its historic features. The Administrator of General Services may authorize the use of the property conveyed under this subsection for revenue-producing activities if the Secretary of the Interior (1) determines that such activities are compatible with use of the property for historic monument purposes, (2) approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property, (3) approves grantee's plan for financing repairs, rehabilitation, restoration, and maintenance of the property which must provide that incomes in excess of the costs of such items shall be used by the grantee only for public historic preservation, park, or recreational purposes, and (4) approves the

grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(p). Disposals for correctional facilities.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Attorney General must determine that the property is required for correctional facility use and approve an appropriate program or project for the care or rehabilitation of criminal offenders.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(q). Disposals for port facility purposes.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of Transportation must determine, after consultation with the Secretary of Labor, that the property is located in an area of serious economic disruption; and approve, after consultation with the Secretary of Commerce, an economic development plan associated with the plan of use of the property.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 49 U.S.C. 47151. Disposals for public airport purposes.

Type of property*: Any surplus real or personal property, exclusive of (1) oil, gas and mineral rights; (2) military chapels subject to disposal as a shrine, memorial or for religious purposes under the provisions of Sec. 101-47.308-5; (3) property subject to disposal as a historic monument site under the provisions of Sec. 101-47.308-3; (4) property the highest and the best use of which is determined by the disposal agency to be industrial and which shall be so classified for disposal, and (5) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State, the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 50 U.S.C. App. 1622(d). Disposals of power transmission lines needful for or adaptable to the requirements of a public power project.

Type of property*: Any surplus power transmission line and the right-of-way acquired for its construction.

Eligible public agency: Any State or political subdivision thereof or any State agency or instrumentality.

*The Commissioner, Public Buildings Service, General Services Administration, Washington, DC 20405, in appropriate instances,

may waive any exclusions listed in this description, except for those required by law.

8. Section 101-47.4906 is revised to read as follows:

Sec. 101-47.4906 Sample notice to public agencies of surplus determination.

Notice of Surplus Determination—Government Property

(Date)

(Name of property)

(Location)

Notice is hereby given that the above described property has been determined to be surplus Government property. The property consists of ____ acres of fee land, more or less, together with easements and improvements as follows:

This property is surplus property available for disposal under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), as amended, certain related laws, and applicable regulations. The applicable regulations provide that non-Federal public agencies shall be allowed a reasonable period of time to submit a formal application for surplus real property in which they may be interested. Disposal of this property, or portions thereof, may be made to public agencies for the public uses listed below whenever the Government determines that the property is available for such uses and that disposal thereof is authorized by the statutes cited and applicable regulations. (Note: List only those statutes and types of disposal appropriate to the particular surplus property described in the notice.)

16 U.S.C. 667b-d	Wildlife conservation.
23 U.S.C. 107 and 317	Federal aid and certain other highways.
40 U.S.C. 122	Transfer to the District of Columbia.
40 U.S.C. 345c	Widening of highways, streets, or alleys.
40 U.S.C. 484(e)(3)(H)	Negotiated sales for general public purpose uses. (Note: This statute should not be listed if the affected surplus property has an estimated value of less than \$10,000.)
40 U.S.C. 484(k)(1)(A)	School, classroom, or other educational purposes.
40 U.S.C. 484(k)(1)(B)	Protection of public health, including research.
40 U.S.C. 484(k)(2)	Public park or recreation area.
40 U.S.C. 484(k)(3)	Historic monument.
40 U.S.C. 484(p)	Correctional facility.
40 U.S.C. 484(q)	Port facility.
49 U.S.C. 47151	Public airport.
50 U.S.C. App. 1622(d)	Power transmission lines.

If any public agency desires to acquire the property under any of the cited statutes, notice thereof must be filed in writing with (Insert name and address of disposal agency):

60 FR 35706: Public Benefit Conveyances of Port Facilities

Such notice must be filed not later than _____
(Insert date of the 21st day following the date of the notice.)

Each notice so filed shall:

- (a) Disclose the contemplated use of the property;
- (b) Contain a citation of the applicable statute or statutes under which the public agency desires to procure the property;
- (c) Disclose the nature of the interest if an interest less than fee title to the property is contemplated;
- (d) State the length of time required to develop and submit a formal application for the property. (Where a payment to the Government is required under the statute, include a statement as to whether funds are available and, if not, the period required to obtain funds.); and
- (e) Give the reason for the time required to develop and submit a formal application.

Upon receipt of such written notices, the public agency shall be promptly informed concerning the period of time that will be allowed for submission of a formal application. In the absence of such written notice, or in the event a public use proposal is not approved, the regulations issued pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 provide for offering the property for sale.

Application forms or instructions to acquire property for the public uses listed in this notice may be obtained by contacting the following Federal agencies for each of the indicated purposes:

(Note: For each public purpose statute listed in this notice, show the name, address, and telephone number of the Federal agency to be contacted by interested public body applicants.)

Dated: June 27, 1995.

Julia M. Stasch,
Acting Administrator of General Services.

[FR Doc. 95-16454 Filed 7-10-95; 8:45 am]

BILLING CODE 6820-96-M

46 FR 42466: Final Rule for Public Benefit Conveyances of Port Facilities

46 *Federal Register* 42466, 16 August 1995

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46CFR Part 387

[FPMR Amendment H-192]

RIN 2133-AB13

Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility

AGENCY: Maritime Administration, Department of
Transportation

ACTION: Final rule.

SUMMARY: This rule provides guidance for implementation by the Secretary of Transportation, acting by and through the Maritime Administrator, Maritime Administration (Secretary), of controlling regulations issued by the Administrator of General Services (Administrator), as authorized by Public Law 103-160. This rule prescribes the terms, reservations, restrictions, and conditions under which the Secretary will convey surplus Federal real property and related personal property to public entities for use in the development or operation of a port facility.

EFFECTIVE DATE: This rule is effective August 16, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Carman, Acting Chief, Division of Ports, Maritime Administration, MAR-830, Room 7201, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366-4357.

SUPPLEMENTARY INFORMATION: Due to the downsizing of the United States Government, surplus Federal real property and related personal property is becoming available which may be suitable for the development or operation of a port facility. Section 2927 of the National Defense Authorization Act for Fiscal Year 1994, enacted November 30, 1993, Public Law 103-160, amended Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) to provide that under such regulations as the

Administrator, after consultation with the Secretary of Defense, may prescribe, the Administrator or the Secretary of Defense, in the case of property located at a military installation closed or realigned pursuant to a base closure law, may, in his or her discretion, assign to the Secretary for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for the development or operation of a port facility. The Secretary of Transportation delegated the authority to convey such real and personal surplus Federal property to the Maritime Administrator (59 FR 36987, July 20, 1994). The Administrator has issued a final rule (60 FR 35706, July 11, 1995). This rule establishes the terms, reservations, restrictions, and conditions of the conveyance, as required by Public Law 103-160, which are consistent with the controlling regulations at 41 CFR 101-47.308-10. Most of the terms, reservations, restrictions, and conditions used in this rule are found in other surplus Federal property conveyance program regulations of Federal agencies. The port facility definition is new and was developed by the Secretary to implement the conveyance program.

Rulemaking Analyses and Notices

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule would not significantly affect other Federal agencies; would not materially alter budgetary impacts; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in E.O. 12866, and has been determined to be a nonsignificant rule under the Department Regulatory Policies and Procedures. Accordingly, it is not considered to be a significant regulatory action under E.O. 12866. Since this is a matter relating to public property it is exempt from the notice requirements of the Administrative Procedure Act (5 U.S.C. 553 (a)(2)). Furthermore, it is necessary to finalize guidelines to facilitate and expedite the selection of the recipients of properties and the actual conveyance.

46 FR 42466: Final Rule for Public Benefit Conveyances of Port Facilities

This rule has not been reviewed by the Office of Management and Budget.

Federalism

The Secretary has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Regulatory Flexibility Act

The Secretary certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Secretary has considered the environmental impact of this rulemaking and has concluded that the Secretary, as a sponsoring agency under the port facility conveyance, is not required to prepare an environmental assessment under the National Environmental Policy Act of 1969 (NEPA). The Secretary will insure that the reuse plan submitted by an applicant complies with the provisions of NEPA as prepared by the disposal agency.

Paperwork Reduction Act

This rulemaking contains a reporting requirement that is subject to the Office of Management and Budget (OMB) approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), as amended, and is being (or has been) submitted.

List of Subjects in 46 CFR Part 387

Government property management, Surplus Government property.

Accordingly, new 46 CFR Part 387 is added to read as follows:

PART 387--UTILIZATION AND DISPOSAL OF SURPLUS FEDERAL REAL PROPERTY FOR DEVELOPMENT OR OPERATION OF A PORT FACILITY

Sec.

12.1 Scope.

12.2 Definitions.

12.3 Notice of availability of surplus property.

12.4 Applications.

12.5 Surplus property assignment recommendation.

12.6 Terms, reservations, restrictions, and conditions of conveyance.

Authority: Pub. L. 103-160, 107 stat. 1933 (40 U.S.C. 484 (q))

Sec. 12.1 Scope.

This part is applicable to Surplus Property that is recommended by the Secretary as being needed for the development or operation of a Port Facility and is appropriate for being assigned to, or that has been assigned to the Secretary for conveyance as provided for in Public Law 103-160 and 40 U.S.C. 471 et seq.

Sec. 12.2 Definitions.

(a) Act means the Federal Property and Administrative Services Act of 1949 as amended, 40 U.S.C. 471 et seq., and 41 CFR 101-47. Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) Applicant means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof, that has submitted an application to the Secretary to obtain surplus Federal property.

(c) Disposal Agency means the executive agency of the Government which has authority to assign property to the Secretary for conveyance for development or operation of a port facility.

(d) Grantee means the Applicant to which surplus Federal property is conveyed.

(e) Grantor means the Secretary.

(f) Port Facility means any structure and improved property, including services connected therewith, whether located on the waterfront or inland, which is used or intended for use in developing, transferring, or assisting maritime commerce and water dependent industries, including, but not limited to, piers, wharves, yards, docks, berths, aprons, equipment used to load and discharge cargo and passengers from vessels, dry and cold storage spaces, terminal and warehouse buildings, bulk and liquid storage terminals, tank farms, multimodal transfer terminals, transshipment and receiving stations, marinas, foreign trade zones, shipyards, industrial property, fishing and aquaculture structures, mixed use waterfront complexes, connecting channels and port landside transportation access routes.

(g) Secretary means the Secretary of Transportation acting by and through the Maritime Administrator, Maritime Administration by delegation of authority.

(h) Surplus Property means Federal real and related personal property duly determined to be unneeded by a Federal agency which may be conveyed to an Applicant for use in the development or operation of a port facility.

Sec. 12.3 Notice of availability of surplus property.

he Disposal Agency shall publish notices of availability of excess and surplus Federal real and personal property. The Secretary will advise eligible public port agencies, in an appropriate manner, of the availability of Surplus Property that is deemed to have port facility potential. Potential Applicants shall notify the Secretary, in writing, of a desire to acquire surplus Federal property before the expiration of the notice period specified in the Notice of Surplus Property--Government Property.

Sec. 12.4 Applications.

Application forms for conveyance of Surplus Property can be obtained from the Maritime Administration, Division of Ports, 400 Seventh Street, SW, Washington, DC 20590. The applicant shall identify on the application form the requested property, agree to the terms/conditions of the conveyance and shall also submit a Port Facility Redevelopment Plan (PFRP) which details the plan of use for the property and the associated economic development plan.

Sec. 12.5 Surplus property assignment recommendation.

Before any assignment recommendation is submitted to the Disposal Agency by the Secretary the following conditions shall be met:

(a) The Secretary has received and approved an application for the property.

(b) The Applicant is able, willing, and authorized to assume immediate possession of the property and pay administrative expenses incidental to the conveyance (application preparation, documentation, legal and land transfer costs).

(c) The Secretary, after consultation with the Secretary of Labor, has determined that the property to be conveyed is located in an area of serious economic disruption.

(d) The Secretary, after consultation with the Secretary of Commerce, approves the PFRP as part of a necessary economic development program.

(e) The Secretary determines that the application complies with the provisions of the National Environmental Policy Act of 1969 as prepared by the Disposal Agency.

Sec. 12.6 Terms, reservations, restrictions, and conditions of conveyance.

(a) Conveyances of property shall be on forms approved by, and available from the Secretary, and shall include such terms, reservations, restrictions and conditions set forth in this part and such other terms, reservations, restrictions and conditions as the Secretary may deem appropriate or necessary.

(b) Property shall be conveyed by a quitclaim deed or deeds on an "as is, where is" basis without any warranty, expressed or implied.

(c) Property shall be used and maintained in perpetuity for the purpose for which it was conveyed, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the Government, revert to the Government.

(d) The entire Port Facility, including all structures, improvements, facilities and equipment in which the deed conveys any interest shall be maintained at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the useful life thereof, as determined by the Grantor.

(e) No property conveyed shall be mortgaged or otherwise disposed of, or rights or interest granted by the Grantee without the prior written consent of the Grantor. However, the Grantor will only review leases of five years or more to determine the interest granted therein.

(f) Property conveyed for a Port Facility shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without discrimination.

(g) The Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the water and land access to the Port Facility.

(h) The Grantee shall operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by Grantor, the port and all facilities thereon and connected therewith which are necessary to service the maritime users of the Port Facility and will not permit any activity thereon which would interfere with its use as a Port Facility.

(i) The Port Facility is subject to the provisions of Title 46 Code of Federal Regulations (CFR) Part 340.

(j) The Grantee shall furnish the Grantor such financial, operational and annual utilization reports as may be required.

(k) Where construction or major renovation is not required or proposed, the Port Facility shall be placed into use within twelve (12) months from the date of this conveyance. Where construction or major renovation is contemplated at the time of conveyance, the property shall be placed in service according to the redevelopment time table approved by the Grantor in the PFRP.

(l) The Grantee shall not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the terms, reservations, restrictions and conditions set forth in the application and the deed.

(m) The Grantee shall keep up to date at all times a Port Facility layout map of the property described herein showing:

(1) the boundaries of the Port Facility and all proposed additions thereto, and

(2) the location of all existing and proposed port facilities and structures, including all proposed extensions and reductions of existing port facilities.

(n) In the event that any of the terms, reservations, restrictions and conditions are not met, observed, or complied with by the Grantee, the title, right of possession and all other rights conveyed by the deed to the Grantee, or any portion thereof, shall, at the option of the Grantor revert to the Government, in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or its successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur.

(o) The deed will contain a severability clause dealing with the terms, reservations, restrictions and conditions of conveyance.

(p) The Grantee shall remain at all times a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof.

(q) The Grantee shall comply at all times with all applicable provisions of law, including, the Water Resources Development Act of 1990.

(r) The Grantee shall not modify, amend or otherwise change its approved PFRP without the prior written consent of Grantor and shall implement the PFRP as approved by the Grantor.

(s) The Government under Section 120 (h)(3) of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, as amended, warrants that:

(1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance on the property has been taken before the date of the conveyance, and

(2) any additional remedial action found to be necessary after the date of the conveyance shall be conducted by the Government.

(t) The Government reserves the right of access to any and all portions of the property for purposes of environmental investigation, remediation or other corrective action and compliance inspection purposes.

(u) The Grantee shall agree that in the event, the Grantor exercises its option to revert all right, title, and interest in and to any portion of the property to the Government, or Grantee voluntarily returns title to the property in lieu of a reverter, the Grantee shall provide protection to, and maintenance of the property at all times until such time as the title is actually reverted or returned to and accepted by the Government. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in regulations implementing the Act.

(v) The Grantor expressly reserves from the conveyance:

(1) oil, gas and mineral rights,

(2) improvements without land,

(3) military chapels, and

(4) property disposed of pursuant to 204 (c) of the Act.

(w) The Government reserves all right, title, and interest in and to all property of whatsoever nature not specifically conveyed, together with right of removal thereof from the Port Facility within one (1) year from the date of the deed.

(x) The Grantee shall agree to maintain any portion of the property identified as "historical" in accordance with recommended approaches in the Secretary of Interior Standards for Historic Property at 16 U.S.C. 461-470w-6.

(y) Prior to the use of any property by children under seven (7) years of age, the Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards in accordance with applicable lead-based paint laws and regulations.

(z) The Grantee agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration.

(aa) The Grantee shall agree that in its use and occupancy of the Port Facility it shall comply with all laws relating to asbestos.

(bb) All construction on any portion of the property identified as "wetlands" as determined by the appropriate District of the Army Corps of Engineers shall comply with Department of the Army Wetland Construction Restrictions contained in Title 33 CFR, Parts 320 through 330.

(cc) The Grantee shall agree to maintain, indemnify and hold harmless the Grantor and the Government from any and all claims,

demands, costs or judgments for damages to persons or property that may arise from the use of the property by the Grantee, guests, employees and lessees.

(dd) The Grantor, on written request from the Grantee, may grant release from any of the terms, reservations, restrictions and conditions contained in the deed, or the Grantor may release the Grantee from any terms, restrictions, reservations or conditions if the Grantor determines that the property so conveyed no longer serves the purpose for which it was conveyed.

(ee) The Grantor shall make reforms, corrections or amendments to the deed if necessary to correct such deed or to conform such deed to the requirements of applicable law.

Dated: August 10, 1995.

By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administrator.
[FR Doc. 95-20180 Filed 8-15-95; 8:45 am]
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